

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 4, 2024

RE: **Power Purchase Agreement with Edge Solar LLC**

Attached hereto for your consideration is a proposed Power Purchase Agreement (Agreement) with Edge Solar LLC (Edge), a subsidiary of the Williams Corporation (Williams), related to the development of a utility scale solar power generation facility on former phosphate mining land owned by Williams located east of State Road 33 and south of I-4. Edge will develop, construct, own, operate and maintain the 74.8 MW solar facility and sell all power generated from that facility to Lakeland Electric pursuant to this Agreement. The Agreement represents a benefit to both parties, with Lakeland Electric adding capacity in the summer, and Williams improved environmental, social, and governance profile resulting from the development of a large-scale renewable energy project on formerly mined land.

Upon approval by the City Commission, the initial term of the Agreement shall commence upon commercial operation of the facility, with a guaranteed operation date of no later than March 7, 2027, and continue until the final day of the 24th operating year as determined by the commercial operation date unless otherwise terminated as provided in the Agreement. Upon mutual written agreement of the parties, and one (1) year prior to the expiration of the initial term, the Agreement may be extended for an additional six (6) year period. The City reserves the right to terminate the Agreement for any reason upon twelve (12) months prior written notice to Edge. Such termination by the City will be subject to an early termination payment schedule as set forth in the Agreement.

In accordance with the Agreement, Edge will sell and deliver all capacity and energy produced by the facility to the City upon commencing commercial operation. If Edge fails to achieve commercial operation by March 7, 2027, Edge will be required to pay the City liquidated damages in the amount of \$75.00 per MW per day, with a cap of \$2,000,000.00. Edge will also be obligated to pay the City liquidated damages for decreased capacity based on a calculation of capacity shortfall, which shall not exceed \$500,000.00.

Pursuant to the Agreement, Edge shall be responsible for the delivery of wholesale electric capacity and energy to the City at a specified delivery point and will retain any risk of loss up to such delivery point. In addition, Edge Solar will indemnify the City from any and all claims, including bodily injury or damage to or destruction of

property that may arise as a result of Edge's gross negligence or willful misconduct pursuant to this Agreement.

Accordingly, the City will purchase all energy generated from Edge's facility, which grants the City the right to claim a portion of the 74.8 MW of solar capacity (37.4MW summer, 0MW winter), at a rate of \$45.50 per MW hour. The cost of energy purchased by the City will be based on projected generation rates and is estimated to be \$8,190,000.00 in 2027. Lakeland Electric will incorporate the expected energy purchase from Edge's solar facility in its budget for each subsequent budget year. The Agreement also contains a one-time prepayment option in year six (6) of the initial term that will enable the City to buy down the rate to \$44.00 per MW hour for a price of \$2,500,000.00.

It is recommended that the City Commission approve the Power Purchase Agreement with Edge and authorize the appropriate City officials to execute all corresponding documents related to the Agreement on behalf of the City.

Attachment

POWER PURCHASE AGREEMENT

by and between

EDGE SOLAR LLC,

as Seller,

and

CITY OF LAKELAND, on behalf of its municipal utility,

LAKELAND ELECTRIC,

as Buyer,

dated as of

November 4, 2024

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “Agreement”), dated as of November 4, 2024 (the “Effective Date”), is entered into by and between EDGE SOLAR LLC, a Delaware limited liability company (“Seller”) and CITY OF LAKELAND, a municipality organized and existing in accordance with the laws of the State of Florida, on behalf of its municipal utility, LAKELAND ELECTRIC (“Buyer”). Each of Buyer and Seller are referred to in this Agreement as a “Party”, and collectively as the “Parties”.¹

RECITALS

WHEREAS, Seller intends to develop, construct, own, operate and maintain a solar photovoltaic electric generation facility with an anticipated nameplate capacity rating of 74.8 MW_{AC} (the “Anticipated Nameplate Capacity”) in Polk County, State of Florida (as more particularly described in Exhibit A, and together with all materials, systems, structures, features and improvements necessary to produce electricity at such facility, including the Site and all associated land rights, the “Facility”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, all of the electricity produced by the Facility, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer, sale or assignment permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller’s contractors, but, in either case, only if such relinquishment or cessation is not caused by or attributable to an Event of Default by Buyer, a request by Buyer or a Force Majeure Event.

“AC Capacity” and the subscript use of “AC” mean, with respect to a solar photovoltaic generating facility, the peak alternating current Energy that a facility is capable of delivering, expressed in kW or MW.

“Affiliate” means, with respect to a Person, any other Person that (a) Controls, directly or indirectly, such Person; (b) is Controlled, directly or indirectly, by such Person; or (c) is under common Control with such Person.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

¹ NTD: This draft remains subject to further review and comment by tax and other subject matter specialists.

“Anticipated Nameplate Capacity” has the meaning set forth in the first recital paragraph.

“Applicable Law” means with respect to a Person, collectively, any federal or state law, treaty, franchise, rule, regulation, standard, order, writ, judgment, injunction, decree, award, or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its properties are subject.

“Bankrupt” means, with respect to a Person, such Person: (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law; (b) has any such petition filed, or any such proceeding or cause of action commenced, against it if such petition, proceeding, or action is not discharged, dismissed, stayed, or restrained within 60 days following the filing or commencement thereof; (c) makes an assignment or any general arrangement for the benefit of its creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) admits in writing its general inability to pay its debts as they come due.

“BOP/EPC Contract” means the engineering, procurement and construction agreement (whether styled as a balance of plant, balance of systems, engineering, procurement and construction, or other agreement) entered into by Seller for the engineering, procurement, and construction of the Facility.

“BOP/EPC Contractor” means the contractor retained by Seller under the BOP/EPC Contract.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. With respect to each Party, a Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time in the location designated by such Party for receipt of notice.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Credit Support Amount” means the lesser of \$24 million dollars or the Remaining Contract Value pursuant to Exhibit G.

“Buyer Indemnitees” has the meaning set forth in Section 9.4(a).

“Capacity LD Cap” means \$500,000.00.

“Capacity LD Rate” means an amount equal to \$50,000.00 per MW_{AC}.

“Cash” means U.S. Dollars.

“Change in Law” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law, (ii) the imposition of any material conditions on the issuance or renewal of any Permit after the Effective Date (notwithstanding the general requirements contained in any Permit at the time of application or issue to comply with future Applicable Laws) or (iii) any withdrawal of any required federal, state, municipal or local authorization, which in each case of the foregoing clauses (i), (ii) or (iii), establishes requirements affecting the performance of the Seller’s obligations hereunder; provided, that a change in any federal, state, county or other Tax law shall not be a Change in Law hereunder.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions, as determined pursuant to Section 7.6(a).

“Commercial Operation Conditions” has the meaning set forth in Section 7.6(b).

“Commercial Operation Date” means the later of (a) the date specified by Seller in a written notice delivered to Buyer in accordance with Section 7.6(a) as the date on which the Facility has commenced Commercial Operation, and (b) the date on which Commercial Operation is actually achieved.

“Committed Energy” means, with respect to an hour, the Metered Output for such hour.

“Condemnation Event” means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility, by any Governmental Authority or otherwise pursuant to Applicable Law.

“Confidential Information” means information provided by one Party to the other in connection with this Agreement, including: (a) the content of documents, ideas, business methods, finances, prices, business plans, financial development plans, manpower plans, customer lists or details, computer systems, software, know-how, trade secrets or other matters of the disclosing Party; and (b) other information the disclosing Party designates as confidential. Notwithstanding the foregoing, “Confidential Information” does not include information that: (i) at the time of disclosure or thereafter is generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives in violation of this Agreement; (ii) was provided to the receiving Party on a non-confidential basis from a source other than the disclosing Party; (iii) was otherwise independently acquired or developed by the receiving Party without reference to the Confidential Information of the disclosing Party or otherwise violating its obligations under this Agreement; or (iv) is subject to disclosure pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.

“Contract Price” means (i) with respect to each month of the Primary Term during the Delivery Period, an amount equal to \$45.50 per MWh of Metered Output for such month, or (ii) \$44.00 per MWh if Purchaser exercises its prepayment right pursuant to Section 3.1(c), and (iii) with respect to each month of any Secondary Term during the Delivery Period, the applicable amount specified in Section 2.1(b) for such month.

“Control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Costs” has the meaning set forth in Section 9.2(b).

“Credit Rating” means, with respect to a Person, on any date of determination, the respective rating then assigned to such Person’s senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s.

“Credit Support” means (i) a Letter of Credit issued by a Qualified Issuer in form and substance acceptable to Seller, (ii) a guaranty in form and substance acceptable to Seller from an entity that has an Investment Grade Credit Rating, (iii) Cash or (iv) another form of credit support acceptable to Seller, in each case, in an aggregate amount equal to the then-applicable Buyer Credit Support Amount.

“DCF” means discounted Cash flows discounted with an annual 8% rate of interest.

“Decreased Capacity Damages” has the meaning set forth in Section 7.4(d)(ii).

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Condition” has the meaning set forth in Section 7.4(b).

“Delay Liquidated Damages” has the meaning set forth in Section 7.4(c).

“Delay LD Cap” means \$2,000,000.00.

“Delay LD Rate” means an amount equal to \$75.00 per MW_{AC} per day.

“Delivery Period” has the meaning set forth in Section 2.1(c).

“Delivery Point” means the physical point of interconnection between the Facility and the Transmission System on the high side (Buyer or Transmission Provider side) of the transformer, as further described in Exhibit A.

“Early Termination Date” has the meaning set forth in Section 8.4(a).

“Early Termination Notice” has the meaning set forth in Section 8.4.

“Early Termination Payment” has the meaning set forth in Section 8.4(c).

“Economic Loss” has the meaning set forth in Section 9.2(b).

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Energy” means electric energy, expressed in units of kWh or MWh.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date, together with those adopted, approved, enacted or issued by any Governmental Authority during the Term, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to, (a) renewable energy credits; (b) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility or (ii) Environmental Incentives.

“Environmental Incentives” means: (i) any applicable Tax Incentive, (ii) direct third-party rebates or subsidies for generation of energy by a renewable energy source; (iii) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels; (iv) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; and (v) other financial incentives in the form of credits, reductions, or allowances under Applicable Law attributable to any aspect of the Facility or its Energy output.

“Event of Default” has the meaning set forth in Section 9.1(a).

“Facility” has the meaning set forth in the first recital paragraph.

“Facility Attributes” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” or any current or future capacity credits or similar accreditations for which the Facility qualifies, including energy imbalance services, generation imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, control area services, system integration services, operating spinning reserve services, and operating supplemental reserve services.

“FNTP Date” means the date on which Seller has (a) delivered full notice to proceed (however defined or described) to the BOP/EPC Contractor under the BOP/EPC Contract and all conditions precedent to the effectiveness of such notice have been satisfied and (b) if the supply of modules for the Facility is not within the scope of the BOP/EPC Contractor’s obligations under the BOP/EPC Contract, delivered a purchase order or full notice to proceed (as applicable, and however defined or described) to the Module Supplier for all photovoltaic modules to be installed at the Facility and all conditions precedent to the effectiveness of such purchase order or notice, as applicable, have been satisfied.

“Force Majeure Event” has the meaning set forth in Section 8.1(b).

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, taxing authority, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Governmental Charges” has the meaning set forth in Section 5.4(a).

“Guaranteed Commercial Operation Date” means March 1, 2027, as such date may be extended pursuant to Section 7.4(b).

“Guaranty” means a guaranty issued by an Affiliate of the Buyer with an Investment Grade Credit Rating in such form as may be reasonably acceptable to Seller.

“Guaranty Default” means, with respect to a Guaranty, (a) the issuer of such Guaranty no longer has an Investment Grade Rating, (b) the issuer of such Guaranty has failed to comply with any of its material covenants or obligations under such Guaranty and such failure has not been remedied within 10 days following Guarantor’s or the Buyer’s receipt of notice of such failure, (c) the issuer of such Guaranty has disaffirmed, disclaimed, rejected, or challenged the validity of such Guaranty, whether in whole or in part, (d) any representation or warranty made by the issuer under such Guaranty is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within 10 days following the Guarantor’s or the Buyer’s receipt of notice, (e) the issuer of such Guaranty has become Bankrupt, or (f) such Guaranty terminates or otherwise ceases to be in full force and effect while such Guaranty is required to be maintained pursuant to the terms of this Agreement.

“Installed Capacity” means the total nameplate AC Capacity of the Facility, as of a given moment, taking into account the operating condition of the Facility, the Facility’s auxiliary energy requirements, solar irradiance, temperature and relative humidity conditions, losses and other relevant factors at such time, without deduction for any capacity affected by a Loss Event, in each case as measured at the Delivery Point.

“Interconnection Agreement” means the agreement between Seller and the Transmission Provider pursuant to which Seller and the Transmission Provider set forth the terms and conditions for

interconnection of the Facility to the Transmission System, as amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Completion” has the meaning set forth in Section 7.5(d).

“Interconnection Delay LD Cap” means \$2,000,000.00.

“Interconnection Delay LD Rate” means an amount equal to \$75.00 per MW_{AC} per day.

“Interconnection Facilities” means all electrical transmission, distribution and other facilities to be constructed by Buyer or its Affiliates pursuant to the terms of the Interconnection Agreement.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) *plus* eight (8)% and (b) the maximum rate permitted by Applicable Law.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Investment Grade Credit Rating” means a Credit Rating equal to or better than BBB- from S&P and/or Baa3 from Moody’s.

“kW” means a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

“Letter of Credit” means an irrevocable standby letter of credit issued by a Qualified Issuer in substantially the form attached as Exhibit G to this Agreement or in such other form as may be required by the applicable Qualified Issuer, with such modifications thereto as the Seller may in its reasonable discretion require.

“Letter of Credit Default” means, with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit ceases to be a Qualified Issuer; or (b) the issuer of the Letter of Credit becomes Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“Loss Event” means (a) any property casualty, loss, or other similar event that materially affects the Facility due to a Force Majeure Event or (b) any Condemnation Event.

“Losses” has the meaning set forth in Section 9.4.

“Meter” means a meter associated with the Facility’s Metering Facilities.

“Metered Output” means, with respect to an hour, the amount of Energy generated by the Facility, expressed in MWh, and delivered to the Delivery Point, as measured by the Facility’s Metering Facilities.

“Metering Facilities” means the metering and data processing equipment needed for the registration, recording and transmission of information regarding Committed Energy installed and owned, operated and maintained in accordance with the terms of the Interconnection Agreement and the applicable rules of the Transmission Provider.

“Module Supplier” means the supplier retained by Seller or its applicable Affiliate to supply solar modules for the Facility under the module supply agreement.

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“MW” means 1,000 kW of electric capacity.

“MWh” means 1,000 kWh of electric energy.

“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

“Operating Year” means a period of twelve consecutive calendar months, with the first such period commencing on and including the Commercial Operation Date and continuing through but excluding the first anniversary of the Commercial Operation Date, and with each successive period commencing immediately upon the conclusion of the prior period and continuing through but excluding the next anniversary of the Commercial Operation Date.

“Outside Commercial Operation Date” means March 1, 2028, as such date may be extended in the event the Guaranteed Commercial Operation Date is delayed in accordance with Section 7.4(b).

“Party” and “Parties” have the meanings set forth in the introductory paragraph of this Agreement.

“Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the development, construction, ownership, operation and maintenance of the Facility.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“Prepayment Amount” has the meaning set forth in Section 3.1(c).

“Products” means Committed Energy.

“Prudent Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the solar electric power industry that, during the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the solar electric power generation industry, during the relevant period, as described in the immediate preceding sentence.

“Qualified Issuer” means a major U.S. commercial bank or a U.S. branch office of a foreign bank that has a Credit Rating of “A-” or better by S&P and “A3” or better by Moody’s and has assets of at least \$10,000,000,000 or a bank mutually agreed by both Parties.

“Remaining Contract Value” means the dollar value represented on Exhibit F for the corresponding Operating Year.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements set forth in Exhibit D.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“Seller” has the meaning set forth in the introductory paragraph of this Agreement.

“Seller Indemnitees” has the meaning set forth in Section 9.4(b).

“Seller Replacement Value” has the meaning set forth in Section 8.4

“Site” means the real property on which the Facility is to be built and located, as more particularly described in Exhibit A.

“Tax Incentive” means any Tax related benefit established or re-established by any Governmental Authority attributable to, or on the account of, any aspect the Facility or its Energy output, including without limitation: (i) investment tax credits; (ii) production tax credits; and (iii) tax depreciation (including accelerated and/or bonus depreciation); and (iv) any other adjustment, credit, deduction, exemption, or exclusion which has the effect of diminishing the liability for Taxes of any person under Applicable Law attributable to any aspect of the Project or its Energy output. For the avoidance of doubt, a Tax Incentive includes any rights to receive a payment in lieu thereof, regardless of whether the right to receive payment comes from a Governmental Authority, a transferee or any other person.

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

“Term” has the meaning set forth in Section 2.1(a).

“Termination Amount” has the meaning set forth in Section 9.2(b).

“Transmission Provider” means Lakeland Electric, or its successor.

“Transmission System” means the facilities used for the transmission of electricity owned and operated by the Transmission Provider, including any modifications or upgrades made to such facilities.

1.2 **Standards of Interpretation**

For purposes of this Agreement: (i) terms defined in the singular shall have a corresponding meaning when used in the plural and vice versa; (ii) references to “Articles,” “Sections,” “Exhibits,” and “Attachments” are to articles or sections of, or exhibits or attachments to, this Agreement; (iii) all references to a particular entity include that entity’s successors and permitted assigns; (iv) the words “herein,” “hereof,” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection; (v) all accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles in the United States, consistently applied; (vi) references to this Agreement include the appendices, Exhibits, Attachments, annexes, schedules, and other attachments to this Agreement, as the same may be amended, supplemented, replaced, restated, or otherwise modified

from time to time; (vii) terms used in the masculine include the feminine and neuter and vice versa; (viii) the word “including,” when used in this Agreement, means including without limitation; (ix) references to “Dollars” and the symbol “\$” mean U.S. Dollars; (x) references to any Governmental Authority include any successor to its applicable functions; and (xi) references to any Applicable Law, including the Internal Revenue Code, include any amendments, successor, or replacement thereto.

ARTICLE 2 TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Term and Delivery Period

(a) Primary Term. Subject to Section 2.1(b), this Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement or by agreement of the Parties, will terminate at the end of the 24th Operating Year (such period of time, the “Primary Term,” as the same may be extended in accordance with the terms of this Agreement, the “Term”).

(b) Secondary Term.

Upon mutual written agreement, the Parties may elect to extend the Primary Term for an additional period of six (6) years by delivering written notice of such election on or prior to the date that is one (1) year prior to the expiration of the Primary Term (such additional period, the “Secondary Term”); provided, however, that, if Buyer elects to extend the Term pursuant to this Section 2.1(b), (i) the Parties will mutually agree upon the Contract Price prior to the commencement of the Secondary Term. In the event the Parties are unable to agree upon the Contract Price for the Secondary Term the Agreement will terminate in accordance with Section 2.1(a).

(c) Delivery Period. The delivery term of this Agreement (the “Delivery Period”) includes the period from and including the Commercial Operation Date and continuing through the end of the Term. For the avoidance of doubt, Seller’s obligations to commence selling the Products hereunder are subject to the Commercial Operation Conditions.

2.2 Effect of Termination; Survival of Obligations

(a) Generally. Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. In addition to any other provisions of this Agreement that by their terms survive the termination of this Agreement, the following rights, obligations and provisions survive the termination of this Agreement:

(i) the provisions of this Section 2.2;

(ii) obligations of a Party to the other Party to pay any amounts or to perform any duties or obligations that accrued or arose prior to, that directly resulted from, or that contemplate performance following, the termination of this Agreement;

(iii) the payment related provisions set forth in Section 5.2;

- (iv) the limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (v) the indemnity obligations set forth in Section 9.4 (which survive through the conclusion of the statute of limitations period applicable to any potential third-party claim); and
- (vi) the provisions of Article 11.

ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale of Product

(a) Purchase and Sale of Product. In accordance with the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Committed Energy of the Facility, and Seller shall deliver to Buyer at the Delivery Point, and Buyer shall accept from Seller at the Delivery Point, all of the Committed Energy of the Facility.

(b) Contract Price. In consideration of the right to purchase Committed Energy, and as compensation for any Products purchased hereunder, Buyer shall pay to Seller an amount equal to the Contract Price.

(c) Contract Price Prepayment. Buyer shall have the right to prepay a portion of the Contract Price within twelve (12) months of the date that is seventy-eight (78) months from the Commercial Operation Date by paying to Buyer an amount equal to \$2,500,000.00 (the "Prepayment Amount"). In the month following receipt of the Prepayment Amount the Contract Price shall be reduced to \$44.00 per MWh for the remainder of the Term. If Buyer does not receive the Prepayment Amount in the time period set forth above the Contract Price shall remain as \$45.50 per MWh for the remainder of the Term.

(d) Seller Retains all Environmental Attributes and Environmental Incentives. Notwithstanding anything set forth in this Agreement to the contrary, Buyer acknowledges that (i) Seller is the exclusive owner of the Facility and is entitled to all Environmental Attributes and Environmental Incentives generated or produced by, or otherwise attributable to, the Facility and (ii) nothing set forth in this Agreement constitutes an assignment, transfer, conveyance, encumbrance, sale, or other disposition to Buyer of any portion of the Environmental Attributes or Environmental Incentives generated or produced by, or otherwise attributable to, the Facility.

3.2 Delivery Point

(a) Allocation of Costs and Risks. Other than as expressly provided for in this Agreement, Seller is responsible for all costs and charges imposed on or associated with the Products or the delivery of the Products hereunder up to the Delivery Point. Buyer is responsible for all costs and charges imposed on or associated with the Products, or its receipt, at and after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Committed Energy delivered to Buyer transfers from Seller to Buyer at the Delivery Point. For the avoidance of doubt, title to all Environmental Attributes associated with the Committed Energy shall remain with Seller following the delivery of the Committed Energy at the Delivery Point and, to the extent that Facility Attributes are available or become available during the Term, Seller shall have the exclusive right to all Facility Attributes

associated with or available from the Facility during the Term. At no time shall Buyer be responsible for losses of Committed Energy from the Facility to the Delivery Point.

3.3 **Environmental Attributes**

(a) **Generally.** Seller retains all rights, titles and interest in and to all current or future Environmental Attributes applicable to the Facility or otherwise associated with the Committed Energy. Seller reserves all rights to assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis or otherwise, any portion of the Environmental Attributes generated or produced by, or otherwise attributable to, the Facility during the Term to any Person.

(b) **Reporting Rights.** Seller may report under any program that such Environmental Attributes belong to Seller. Buyer shall not report to any Person, or authorize any other Person to report, that the Environmental Attributes generated or produced by, or otherwise attributable to, the Facility belong to anyone other than Seller. If Seller determines that Buyer or any other Person has made a written statement, written claim, or other written communication that could reasonably be expected to adversely affect Seller's right to claim the exclusive ownership of or reporting rights associated with the Environmental Attributes, Buyer shall promptly following receipt of Seller's written request take such commercially reasonable actions as may be necessary or that Seller may reasonably request in order to retract or otherwise correct such written statement, written claim, or other written communication or to cause such written statement, written claim, or other written communication to be retracted or otherwise corrected, as applicable.

3.4 **Environmental Incentives**

(a) **Generally.** Seller retains all rights, titles and interest in and to all current or future Environmental Incentives applicable to the Facility or otherwise associated with the Committed Energy except as otherwise set forth in Section 3.5(a) of this Agreement. Seller reserves all rights to assign, transfer, convey, encumber, sell, or otherwise monetize or dispose of, any portion of the Environmental Incentives generated or produced by, or otherwise attributable to, the Facility during the Term to any Person.

(b) **Cooperation.** Buyer shall provide to Seller such supporting documentation or other information as may be reasonably requested by Seller with respect to the transactions contemplated by this Agreement to assist Seller in connection with its claim of any Tax Incentives generated or produced by, or otherwise attributable to, the Facility.

(c) **Change in Law.** If Seller becomes ineligible for any currently existing Tax Incentive due to the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law, then, at Seller's option, within thirty (30) days following receipt by Buyer from Seller of written notice of such Change in Law, the Parties shall meet and attempt in good faith to negotiate to amend this Agreement or replace it with a different instrument so as to enable Seller to be eligible for such Tax Incentive. Such amendment or instrument shall not impair any of Seller's rights or increase the burdens or obligations of Buyer under this Agreement, in either case, without such Party's consent. If the Parties are unable to agree upon such amendments within a period of ninety (90) days, then Seller shall have the right to terminate this Agreement without further liability of Seller to Buyer, except with respect to payment of amounts accrued prior to termination. If Seller does not terminate the Agreement pursuant to this Section 3.4(c), the Agreement shall remain in effect as written.

ARTICLE 4 METERING

4.1 Metering Requirements

The amount of Energy to be transferred from Seller to Buyer at the Delivery Point will be determined based on measurements made by the Facility's Metering Facilities to determine the amount of Committed Energy at the Delivery Point. Seller shall ensure that the Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with Prudent Industry Practice and the requirements of the Interconnection Agreement. Buyer shall have the right to install its own metering equipment to obtain meter readings in order to compare such readings to Seller's measurements as it relates to the amount of Energy transferred. Buyer shall be responsible for any cost related to installing, maintaining and operating the metering equipment owned by Buyer for the purpose of ascertaining the accuracy of the readings.

4.2 Meter Inaccuracies and Retroactive Adjustments

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding any applicable tolerances set forth in the Interconnection Agreement, the Parties shall, subject to the Transmission Provider applying the corresponding adjustments and resettling the Product of the Facility during the affected period, adjust all measurements made by the inaccurate or defective Meter during the affected period in order to account for such inaccuracy. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment.

4.3 Records and Audits

(a) Records. Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Metered Output, and such other records as may be required by applicable Governmental Authorities or Prudent Industry Practice. Seller shall retain all such records for a period of not less than two (2) years. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may reasonably require in connection with the performance of its obligations under this Agreement or Applicable Laws.

(b) Audit Rights. Buyer has the right upon at least thirty (30) days prior written notice, at any time during the Term and for a period of two (2) years thereafter, to audit and to examine Seller's records and data kept by Seller relating to the performance of its obligations under, and the administration of, this Agreement during normal business hours and upon reasonable prior written notice. Each Party is responsible for its own costs and expenses associated with any audit or examination.

ARTICLE 5
BILLING AND PAYMENT

5.1 Billing

Except as otherwise specified in this Agreement, the calendar month is the standard period for all payments under this Agreement. On or before the 15th day following the end of each calendar month included in the Delivery Period, Seller shall provide to Buyer, or its designee, an invoice (substantially in the form attached hereto as Exhibit E) specifying (a) the amount due to Seller pursuant to Section 3.1 for the ended calendar month, and (b) any other amounts due between the Parties with respect to such ended calendar month (other than amounts separately invoiced by Buyer). Each such invoice provided by Seller must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice. Seller must deliver each invoice in accordance with the notice requirements of Section 11.1.

5.2 Payments

(a) Generally. Subject to Section 5.2(c), Buyer shall remit payment on any invoice under this Agreement on or before the 30th day after receipt of such invoice or, if such day is not a Business Day, then on the next Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due to Buyer under this Agreement, including any Delay Liquidated Damages, Decreased Capacity Damages, or otherwise in respect of any obligation of Seller to indemnify or reimburse Buyer, within 45 days following the end of the calendar month in which such amounts have become due. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) Late Payments and Interest Rate. Any undisputed amounts not paid when due will accrue interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act.

(c) Corrections to Invoices; Payment Disputes. Each Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice under this Agreement within twelve (12) months following the date such invoice, or adjustment to an invoice, was rendered. Any dispute with respect to an invoice must be made in writing and include a reasonably detailed description of the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due, but may, if not already paid, withhold payment of the disputed portion until such dispute is resolved. If in connection with the resolution of the dispute it is determined that (i) an additional payment is due by a Party, such Party shall make the required payment to the other Party within twenty (20) Business Days following such resolution, together with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or (ii) a Party is entitled to a refund of any amount previously paid, the other Party shall, at the entitled Party's election, either return the amount overpaid within twenty (20) Business Days following such resolution or provide the entitled Party with a credit on the next invoice delivered following resolution of the dispute equal to the amount overpaid, in each case together with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by the other Party or reflected as a credit in an invoice delivered by the other Party, as applicable. If the resolution of any disputed amount results in a payment due from a Party, such Party's payment obligations under this Agreement will not be deemed to have been satisfied until such dispute is resolved and the amount, if any, payable by such Party upon such resolution has been paid.

5.3 **Netting of Payments**

All undisputed mutual debts and payment obligations due and owing between the Parties on the same day pursuant to this Agreement, including any damages, interest, and payments or credits, will be automatically satisfied and discharged through netting, and if the aggregate amount payable by one Party exceeds the aggregate amount that otherwise would have been payable by the other Party, replaced by an obligation of the Party by which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount.

5.4 **Governmental Charges**

(a) Seller shall pay or cause to be paid all taxes imposed by any government authority (“**Governmental Charges**”) on or with respect to the Facility or the Products arising prior to the Delivery Point.

(b) Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than income taxes related to the sale of the Product by Seller, which shall be the responsibility of Seller). In the event one Party remits or pays any Governmental Charges that are the other Party’s responsibility hereunder, the amount of such payment shall be included in the calculation of the next monthly net payment amount calculated by Seller pursuant to this **Article 5**. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

(c) Neither Party is obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder. All Product delivered by Seller to Buyer hereunder are sales for resale.

ARTICLE 6 CREDIT REQUIREMENTS

6.1 **Buyer Credit Support**

If, at any time after the Effective Date, Buyer has a Credit Rating below the Investment Grade Credit Rating by either S&P or Moody’s, then Buyer shall transfer Credit Support to Seller having an aggregate value equal the Buyer Credit Support Amount. Buyer shall maintain such Credit Support for the benefit of Seller until the date on which all of Buyer’s payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Seller has not made a claim). Seller shall be entitled to claim on the Credit Support in accordance with **Section 6.2**. In the event any portion of the Credit Support provided by Buyer is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement, Buyer shall within five (5) Business Days following Seller’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Seller is not less than the Buyer Credit Support Amount. In the event Buyer’s Credit Rating elevates to Investment Grade Credit Rating by both of S&P and Moody’s, the Buyer Credit Support will no longer be required, and Seller shall return to Buyer any Buyer Credit Support provided pursuant to this **Section 6.1** within ten (10) Business Days of Buyer providing written notice of such change in Buyer’s Credit Rating to Seller.

6.2 General Provisions Applicable to Credit Support

(a) Credit Support in the Form of a Letter of Credit.

(i) With respect to each outstanding Letter of Credit, the Buyer shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least 30 days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, the Buyer shall within ten (10) Business Days following the Seller's notice of the Letter of Credit Default transfer to the Seller substitute Credit Support.

(ii) Upon the occurrence of a Letter of Credit Default of the type described in clause (b) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Issuer for purposes of the definition of the term "Letter of Credit" unless otherwise agreed by the Seller.

(iii) Proceeds received by the Seller from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of the Buyer under this Agreement, constitute Credit Support in the form of Cash.

(iv) For purposes of this Agreement, the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by the Seller under such Letter of Credit unless (x) a Letter of Credit Default has occurred with respect to such Letter of Credit or (y) thirty (30) or fewer days remain until the expiration date of such Letter of Credit, in either of which case, the value of such Letter of Credit is equal to \$0.

(v) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of the Buyer.

(b) Credit Support in the Form of a Guaranty. For purposes of this Agreement, the value of Credit Support in the form of a Guaranty is equal to the undrawn portion of the maximum guaranteed amount specified in such Guaranty, if any, unless a Guaranty Default has occurred with respect to such Guaranty, in which case the value of such Guaranty is equal to \$0. If a Guaranty Default occurs with respect to an outstanding Guaranty, the Buyer shall within ten (10) Business Days following the Seller's notice of the occurrence of the Guaranty Default transfer to the Seller substitute Credit Support.

(c) Substitution and Return.

(i) Upon notice to the Seller specifying the items of Credit Support to be exchanged, the Buyer may on any Business Day transfer to the Seller substitute Credit Support, and so long as no Event of Default with respect to the Buyer has occurred and is continuing, the Seller shall return to the Buyer the items of Credit Support identified by the Buyer in its notice by not later than the fifth Business Day following the date on which the Seller receives the substitute Credit Support, except that the Seller will only be required to return Credit Support with a value, as of the date of transfer, equal to the value of the substitute Credit Support as of the same date.

(ii) Upon (A) the reduction of the Buyer Credit Support Amount applicable to the Buyer or (B) the later to occur of (x) the end of the Delivery Period and (y) the satisfaction in full of all of the Buyer's obligations under this Agreement (other than contingent obligations with respect to which the Seller has not made a claim), the Seller shall, within ten (10) Business Days following receipt of the Buyer's demand, return to the Buyer, in the case of clause (A), the

applicable portion of the Credit Support of the Buyer then outstanding in favor of the Seller, and, in the case of clause (B), all Credit Support of the Buyer then outstanding in favor of the Seller. In connection with any such return, the Seller shall at the Buyer's expense take such actions as may be reasonably requested by the Buyer to evidence the release and termination of the applicable Credit Support.

(d) Seller's Rights and Remedies. If at any time a default or Event of Default with respect to the Buyer has occurred or if an Early Termination Date in respect of this Agreement has occurred or been designated as a result of an Event of Default with respect to the Buyer, then, and in addition to the other rights and remedies set forth in the Agreement, the Seller may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Credit Support in the form of Cash held by the Seller; (ii) all rights and remedies available to the Seller under the terms of any Letter of Credit or Guaranty provided for its benefit, if any; and (iii) the right to set-off any present or future amounts payable by the Buyer under this Agreement against any Credit Support held by the Seller (or any obligation of the Seller to transfer that Credit Support to the Buyer).

6.3 **Buyer Credit Support is Not a Limit on Liability**

The Buyer Credit Support contemplated in this Article 6 constitutes security for, but is not a limitation of, Buyer's obligations under this Agreement and shall not be Seller's exclusive remedy for Buyer's failure to perform in accordance with this Agreement.

ARTICLE 7 **DEVELOPMENT, CONSTRUCTION, OPERATION AND MAINTENANCE**

7.1 **Development, Construction, Operation and Maintenance of the Facility**

(a) Generally. Seller shall develop, construct, own, operate and maintain the Facility in accordance with this Agreement, all Applicable Laws, all Permits and Prudent Industry Practice.

(b) Design and Location. Exhibit A includes (i) a preliminary description of the Facility as of the date hereof, including the anticipated number, manufacturer, and power rating of the photovoltaic cell modules and inverters, and (ii) a map of the Site and surrounding area that depicts the location of the Facility and important ancillary facilities, including the Delivery Point. Seller may from time to time modify the design of the Facility as set forth in Exhibit A to the extent that such modifications would not reasonably be expected to have a material and adverse impact on Seller's ability to perform its obligations under this Agreement.

(c) Compliance. Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Applicable Law or Governmental Authority in order to permit Seller to perform its obligations under this Agreement.

(d) Disclosure. Seller shall provide to Buyer such information regarding the permitting, engineering, construction, maintenance, and operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions applicable to Seller with respect to confidentiality, disclosure, or use that would prevent Seller from providing such information to Buyer.

(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit B.

7.2 Development.

Notwithstanding anything set forth in this Agreement to the contrary, nothing expressly stated or implied in this Agreement or represented to Buyer shall require (or be construed as requiring) Seller to undertake the development, construction, financing, installation or operation of all or any portion of the Facility prior to the FNTTP Date. The Parties acknowledge that until the FNTTP Date, Seller shall have the right to complete its evaluation of the economic feasibility of the construction, financing, operation and maintenance of the Facility. In the event that Seller determines that the development, construction, financing, operation or maintenance of the Facility is not economically feasible at any time prior to the FNTTP Date, Seller shall have the right to terminate this Agreement in its sole discretion, upon ninety (90) days prior written notice to Buyer of its intent to terminate, without liability.

7.3 Construction

(a) Generally. From and after the FNTTP Date, Seller shall use commercially reasonable efforts to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date.

(b) Progress Reports.

(i) Quarterly Reports. Until the FNTTP Date, Seller shall deliver to Buyer a quarterly progress report by no later than the 10th Business Day after the end of each calendar quarter.

(ii) Monthly Reports. Commencing with the first calendar month that begins after the FNTTP Date and continuing thereafter until the Commercial Operation Date is achieved, Seller shall deliver to Buyer a monthly progress report by no later than the 10th Business Day of each calendar month.

(iii) Content of Reports. The contents of Seller's quarterly/monthly reports shall include in reasonable detail and with applicable supporting documentation, such information as Buyer may reasonably request with respect to: (i) progress toward the achievement of the Commercial Operation Date, (ii) status of permitting and other required approvals, and (iii) environment, health, and safety matters.

7.4 Delay and Decreased Capacity Damages

(a) Commercial Operation Date Notices. If Seller determines that it is unlikely to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, then Seller shall promptly provide written notice thereof to Buyer, which notice must be accompanied by a reasonably detailed explanation of the reason for the delay and the actions Seller is taking in order to address any resulting delay in the achievement of the Commercial Operation Date (provided, that, with respect to the occurrence of a Force Majeure Event, Seller shall, in lieu of the foregoing comply with the requirements of Section 8.2).

(b) Commercial Operation Date Extensions. In the event that (A) Seller's achievement of the Commercial Operation Date by the Guaranteed Commercial Operation Date is prevented due to (i) the occurrence of a Force Majeure Event, (ii) Buyer's breach of its obligations under this Agreement or (iii) the Buyer's or the Transmission Provider's delay in completing the construction of its interconnection facilities related to the Facility or (B) the guaranteed substantial completion date pursuant to the BOP/EPC Contract or any applicable equipment supply contract for the Facility is extended in accordance with the terms thereof (each, a "Delay Condition"), the Guaranteed Commercial Operations Date will be automatically extended on a day-for-day basis by the number of days of the applicable Delay Condition.

(c) Failure to Timely Achieve Commercial Operation. If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date, Seller shall pay to Buyer as liquidated damages an amount equal to (“Delay Liquidated Damages”) for each day from and after the Guaranteed Commercial Operations Date until the occurrence of the Commercial Operations Date at a daily rate equal to the Delay LD Rate; provided, however that the aggregate amount of Delay Liquidated Damages shall not exceed the Delay LD Cap.

(d) Decreased Capacity.

(i) If the Installed Capacity on the Commercial Operation Date is less than the Anticipated Nameplate Capacity, then Seller shall continue to use commercially reasonable efforts to install and commission additional capacity necessary to cause the Installed Capacity to equal the Anticipated Nameplate Capacity by no later than the Outside Commercial Operation Date.

(ii) If the Installed Capacity on the Outside Commercial Operation Date is less than the Anticipated Nameplate Capacity, then Seller shall pay to Buyer as liquidated damages an amount equal to (A) the capacity shortfall between the Anticipated Nameplate Capacity minus the Installed Capacity as of the Outside Commercial Operation Date multiplied by (B) the Capacity LD Rate (the “Decreased Capacity Damages”); provided, however, that the aggregate amount of Decreased Capacity Damages shall not exceed the Capacity LD Cap.

(e) Exclusive Remedies; Contract Delay and Shortfall Damages.

(i) Receipt of Delay Liquidated Damages and Decreased Capacity Damages, as applicable, are Buyer’s sole and exclusive remedies for Seller’s failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and to cause the Installed Capacity to be equal to the Anticipated Nameplate Capacity by the Outside Commercial Operation Date.

(ii) For the avoidance of doubt, Seller shall have the right to receive any delay liquidated damages or capacity shortfall damages (whether styled as delay liquidated damages, capacity shortfall damages or otherwise) payable by any manufacturer, supplier, construction contractor or other engineering, procurement or construction contractor for the Facility.

7.5 Interconnection Facilities

(a) Generally. Buyer shall use commercially reasonable efforts to complete the development and construction of the Interconnection Facilities at its sole cost and expense in accordance with the schedule and other requirements set forth in an Interconnection Agreement mutually agreeable to the Parties. Buyer shall complete the development and construction of the Interconnection Facilities in accordance with this Agreement, all Applicable Laws, all Permits and Prudent Industry Practice.

(b) Design and Location. Exhibit A includes a preliminary description of the Interconnection Facilities as of the date hereof.

(c) Disclosure. Buyer shall provide to Seller such information regarding the permitting, engineering, construction, maintenance, and operations of the Interconnection Facilities as Seller may from time to time reasonably request, subject to licensing or other restrictions applicable to Buyer with respect to confidentiality, disclosure, or use that would prevent Buyer from providing such information to Seller.

(d) Failure to Timely Complete Interconnection Facilities. If Buyer shall not have completed the development and construction of the Interconnection Facilities in accordance with the schedule and other

requirements set forth in the Interconnection Agreement (“**Interconnection Completion**”) on or prior to the date that Seller has achieved Substantial Completion, except due to the occurrence of a Force Majeure Event specified in Section 8.1 or due to Seller’s breach of this Agreement, with respect to the Facility, then Buyer shall pay Seller liquidated damages for each day from and after the date of Substantial Completion, until the date on which Interconnection Completion occurs, at a daily rate equal to Interconnection Delay LD Rate; provided, however that the aggregate amount of Interconnection Delay Liquidated Damages shall not exceed the Interconnection Delay LD Cap.

7.6 **Commercial Operation Procedure**

(a) Procedure for Achieving Commercial Operation. At least ten (10) Business Days prior to the date on which Seller reasonably expects to achieve Commercial Operation, Seller shall deliver to Buyer a notice that describes in reasonable detail Seller’s schedule for achieving any remaining Commercial Operation Conditions and the Commercial Operation Date. When Seller determines that the requirements set forth in a Commercial Operation Condition are met, Seller shall as a condition to satisfying such Commercial Operation Condition, provide Buyer with written notice that the applicable requirements set forth in the Commercial Operation Condition were met, together with such supporting documentation as is necessary or reasonably requested by Buyer in order to enable Buyer to evaluate whether or not Seller has satisfied the applicable Commercial Operation Condition. If Buyer disagrees with Seller’s determination, Buyer must provide notice to Seller of such disagreement, together with an explanation of the basis for such disagreement, within ten (10) Business Days following its receipt of Seller’s notice and supporting documentation. If Buyer provides notice of disagreement within the ten (10) Business Day period, the Parties shall thereafter review the Commercial Operation Condition in order to promptly resolve the dispute and to determine when the satisfaction of the applicable Commercial Operation Condition occurred or will occur, as applicable.

(b) Commercial Operation Conditions. Commercial Operation will be deemed to have occurred on the date on which all of the following conditions (the “Commercial Operation Conditions”) are, subject to Section 7.5(a), either satisfied or waived by Seller or Buyer, as applicable, in its sole and absolute discretion:

(i) Substantial Completion. The Facility shall have achieved substantial completion in accordance with the BOP/EPC Contract (other than punch list items that do not materially and adversely affect the safe operation, performance, or maintenance of the Facility).

(ii) Permits. Seller shall have obtained all Permits required to be obtained by Seller to operate the Facility in compliance with Applicable Law, this Agreement and Prudent Industry Practice, and all such Permits are in full force and effect.

(iii) Seller Certificate. An officer of Seller or of an Affiliate of Seller, as applicable, that is familiar with the Facility has certified in writing to Buyer that (A) Exhibit A, as updated pursuant to Section 7.1(b), accurately describes the equipment and characteristics of the Facility and (B) the Facility has been constructed in accordance with the applicable requirements of the BOP/EPC Contract and the Facility’s module supply agreement, and no actions have been taken or conditions exist that could invalidate or otherwise materially and adversely affect any warranty available thereunder or from the manufacturer of any material equipment installed at the Facility.

(iv) Buyer Certificate. An officer of Buyer or of an Affiliate of Buyer, as applicable, that is familiar with the Facility has certified in writing to Seller that (A) Buyer is not in breach of its obligations under the Interconnection Agreement and (B) Buyer is in compliance with the terms and conditions of this Agreement in all material respects.

(v) Meters and SCADA Equipment. Seller has installed and commissioned all Meters and SCADA system equipment, data circuits, and other communication systems necessary to allow for remote monitoring of the Facility.

(vi) Interconnection Facilities. The interconnection of the Facility to the Transmission System has been completed and commissioned in accordance with the Interconnection Agreement, including (A) all required interconnection facilities have been constructed; (B) all required interconnection tests have been completed; and (C) the Facility is physically interconnected with the Transmission System and able to deliver energy consistent with the terms of this Agreement.

(vii) Required Facility Documents. Seller has provided to Buyer copies of the Required Facility Documents (as such documents may be redacted to protect confidential or commercial information).

(viii) Insurance Certificates. Seller has provided to Buyer the certificates of insurance evidencing the coverages required by Section 7.1(e) in a form reasonably acceptable to Buyer.

7.7 **Obligation to Schedule and Deliver**

(a) Sharing of Operating Data and Generation Forecasts. During the Delivery Period, Seller shall share with Buyer real-time operating data from the Facility. If Seller delivers forecasts of generation to any entity (e.g., the Transmission Provider), then, upon request, Seller shall also deliver such forecasts to Buyer.

(b) Outage Planning.

(i) Seller shall use commercially reasonable efforts to avoid or mitigate outages during the Delivery Period.

(ii) No later than the Commercial Operation Date and, thereafter, on or before first day of each Operating Year during the Delivery Period commencing with the second Operating Year, Seller shall provide Buyer with an annual schedule of all planned maintenance at the Facility for the upcoming Operating Year.

(iii) Seller shall give Buyer prompt notice of any forced or unplanned outage events at the Facility if such events will curtail or adversely affect scheduled Energy deliveries or any Energy forecasts provided to Buyer. Such notice must include a description of the cause of the outage and an estimate of the duration of the outage. Seller shall provide Buyer regular and frequent updates regarding any changes of status set forth in the initial notice.

7.8 **Operation of the Facility**

From and after the Commercial Operations Date, Seller shall be responsible for operating and maintaining the Facility (or causing the same to be operated and maintained) at its sole cost and expense in accordance with Prudent Industry Practice and Applicable Laws. Without limiting the foregoing, the Parties acknowledge that Seller shall have the right to engage or otherwise delegate to any Person the responsibility to perform all or any portion of the services that may be necessary or desirable in connection with the operation and maintenance of the Facility during the Term.

ARTICLE 8
FORCE MAJEURE EVENTS

8.1 Force Majeure Events

(a) Excuse. Subject to Section 8.2, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of such obligations is prevented due to a Force Majeure Event.

(b) Definition. For purposes of this Agreement, “Force Majeure Event” means, subject to Section 8.1(c), any event or circumstance that wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only to the extent that: (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligations excused, (ii) such event could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) such event is not the direct or indirect result of the negligence or the failure of, or is caused by, the Party seeking to have its performance obligations excused. Force Majeure Events may include, to the extent consistent with the foregoing requirements: (i) acts of a public enemy, war (whether declared or not), insurrection, riot, civil disturbance, rebellion, violent demonstrations, revolution, sabotage, military or terrorist action, economic sanction or embargo; (ii) acts of God or any effect of abnormal or severe natural elements, including earthquakes, fires, floods, hurricanes, pandemics, epidemics, or similar occurrences (including COVID-19); (iii) strikes, labor disputes, labor or material shortages, lock-outs; slow-downs, work stoppages; (iv) action or restraint by court order or other action by a Governmental Authority (as long as the affected Party has opposed to the extent reasonable, such court or government action) or any failure to act on the part of any Governmental Authority (including delay in obtaining any required Permit); and (v) emergencies (including transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Facility or making it impossible for the Transmission Provider to transmit energy, including Energy to be delivered pursuant to this Agreement.

(c) Exclusion. Notwithstanding the definition set forth in Section 8.1(b), a Force Majeure Event does not include, and may not be based on, the following events or conditions:

(i) Seller’s ability to sell any or all of the Products at a price greater than the price set forth in this Agreement;

(ii) Buyer’s ability to purchase any or all of the Products at a price lower than the price set forth in this Agreement;

(iii) loss of Buyer’s markets or reduction of Buyer’s electricity usage;

(iv) a Party’s inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure Event that disables physical or electronic facilities necessary to transfer funds to the payee Party;

(v) inability of Buyer to obtain all necessary transmission, distribution, and interconnection services, including installation of the interconnection facilities and all related transmission network and distribution upgrades to deliver Energy to the Delivery Point or Product to the applicable point of delivery in accordance with this Agreement, as of the time required to satisfy its performance obligations hereunder, regardless of the reason for delay or failure; and

(vi) any new Applicable Law or change in Applicable Law occurring on or after the Effective Date, including an interpretation or application of Applicable Law.

8.2 **Conditions; Resolution**

(a) **Claims of Force Majeure.** In addition to the conditions set forth in Section 8.1(a) and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

(i) provides reasonably prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Facility; and

(ii) provides regular written or oral updates during the continuance of the Force Majeure Event or its consequences that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this Agreement will be prevented or the construction or operation of the Facility, as applicable, will be adversely affected due to the Force Majeure Event.

(b) **Resumption of Performance.** The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Facility resulting from such Force Majeure Event is resolved, as applicable.

8.3 **Termination Due To Force Majeure Event**

(a) **Pre-Commercial Operation Date.** If, prior to the Commercial Operation Date, Seller is prevented from performing its material obligations under this Agreement in order to achieve Commercial Operation for a period of 180 consecutive days or more due to a Force Majeure Event, Either Party may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), with immediate effect.

(b) **Post-Commercial Operation Date.** In addition to and without limiting any other provisions of this Agreement, if, following the occurrence of the Commercial Operation Date, a Party is prevented from performing its material obligations under this Agreement for a period of 365 consecutive days or more due to a Force Majeure Event, the unaffected Party may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), upon no less than thirty (30) days' written notice given at any time while such performance continues to be prevented following the end of the 365-day period, except that (a) if prior to the expiration of such 365-day period, the affected Party has delivered to the unaffected Party a certificate of an independent engineer certifying that any remaining repairs or other remediation efforts necessary for the affected Party to resume performance of its obligations under this Agreement can be completed within an additional 180-day period following the expiration of the initial 365-day period, then the unaffected Party may not exercise its right to terminate this Agreement under this Section 8.3(b) unless the affected Party's performance remains prevented following the expiration of such additional 180-day period, and (b) if the affected Party has provided notice that it is able to resume performance of its obligations, and thereafter resumes such performance, as required by Section 8.2(b) prior to the early termination date designated in such notice, then this Agreement will not terminate.

8.4 **Buyer's Termination for Convenience**

Buyer may, at any time, terminate this Agreement for convenience by delivering 365 days prior written notice to Seller (the "Early Termination Notice"), in accordance with the following:

(a) The Agreement will terminate at the end of the monthly billing cycle that is three hundred sixty-five (365) days from the date of the Termination Notice (the "Early Termination Date").

(b) Upon receipt of a valid Early Termination Notice from Buyer, Seller shall use commercially reasonable efforts to find a third-party purchaser of the power produced from the Facility. The value associated with this third-party power purchase agreement shall be calculated by a DCF analysis with future estimated net cashflow of the third-party power purchase agreement discounted at a rate of 8% per annum (the "Seller Replacement Value"). DCF revenue will include revenue from selling power and the cash value, if any, accruing to Environmental Attributes, Environmental Incentives and Tax Incentives. DCF costs will include, but are not limited to, all capital expenditures necessary to connect to a third-party delivery point, incremental transmission costs incurred and Cash operating expenses for the period between the Early Termination Date and the end of the Delivery Period.

(c) If the Agreement is terminated pursuant to this Section 8.4, Buyer will owe to Seller a payment based on the Schedule set forth on Exhibit F, adjusted for partial year as applicable, and subtracting the Seller Replacement Value (the "Early Termination Payment"). If Seller is unable to find a replacement power purchase arrangement prior to the Early Termination Date then the Seller Replacement Value will be determined to be zero and Buyer will owe the full Early Termination Payment set forth on Exhibit G. For the avoidance of doubt, the Early Termination Payment will under no circumstances be less than zero. The Early Termination Payment shall be paid in accordance with Section 6.3.

(d) The Parties agree to work together prior to the Early Termination Date as may be necessary to take any actions reasonably necessary to effectuate such termination. For the avoidance of doubt, once delivered, any notice of termination shall be irrevocable unless otherwise agreed by Seller in writing.

ARTICLE 9 DEFAULT, REMEDIES, AND TERMINATION

9.1 **Events of Default Generally**

(a) **Mutual Events of Default.** The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party (the events and conditions set forth in this Section 9.1(a) and Section 9.1(b), each an "Event of Default"):

(i) such Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement, and such failure is not cured by such Party within thirty (30) days of the other Party notifying such Party, in writing, of such failure;

(ii) any representation or warranty made by such Party in this Agreement is not true in all material respects as of the date made and such inaccuracy is not cured within thirty (30) days after the other Party notifying such Party of such inaccuracy, which notice sets forth in reasonable detail the nature of the inaccuracy (provided, that if such default is not reasonably capable of being cured within the 30-day cure period but is reasonably capable of being cured, the defaulting Party will have such additional time as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the

non-defaulting Party (exercising reasonable discretion) approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan);

(iii) such Party is in material breach of its obligations under this Agreement (other than an obligation to make payment or an obligation that is otherwise specifically set forth as a separate Event of Default or for which there is an exclusive remedy) and such material breach is not remedied within thirty (30) days after the other Party notifies such Party of such material breach, which notice sets forth in reasonable detail the nature of such material breach (provided, that if such default is not reasonably capable of being cured within the 30-day cure period but is reasonably capable of being cured, the defaulting Party will have such additional time as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting Party (exercising reasonable discretion) approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan;

(iv) such Party becomes Bankrupt;

(v) such Party fails to perform any of its obligations under Article 6; or

(vi) such Party assigns or otherwise transfers this Agreement other than in accordance with Section 11.3.

(b) **Seller Events of Default.** In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an event of default with respect to Seller:

(i) Seller's Abandonment of construction or operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from Buyer.

(c) **Buyer Events of Default.** In addition to the foregoing, the occurrence with respect to Buyer of any of the following events or conditions constitutes an event of default with respect to Buyer:

(i) Interconnection Completion has not occurred on or prior to the date which is six (6) months after the Guaranteed Commercial Operation Date, as that date may be extended from time to time; or

(ii) Buyer's rights or obligations under the Interconnection Agreement are amended or otherwise modified, without Seller's prior written consent, in a manner that would cause such agreements to no longer comply with the requirements of this Agreement, and the non-compliance caused by such amendment or revision is not cured within ten (10) Business Days of written notice thereof.

9.2 **Remedies; Termination for Default**

(a) **Termination for Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("Non-Defaulting Party") may, subject to Section 9.3: (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date no earlier than 30 days after the notice is deemed delivered as the Early Termination Date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Remedies.** Subject to Section 7.4(e), upon a termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate its Economic Loss and Costs, if any, in respect of this Agreement. The Non-Defaulting Party shall aggregate all amounts owing between the Parties under this Agreement into a single amount by netting (i) all amounts due to the Defaulting Party under this Agreement, including, at the option of the Non-Defaulting Party, any Credit Support available to the Non-Defaulting Party against (ii) all amounts due to the Non-Defaulting Party under this Agreement, including the Non-Defaulting Party's Economic Loss and Costs, if any, such that all amounts due between the Parties are netted into a single amount (the "Termination Amount") payable by one Party to the other Party. As soon as practicable following termination, the Non-Defaulting Party shall provide an invoice to the Defaulting Party specifying the Termination Amount due to or from the Defaulting Party and a written statement explaining in reasonable detail the calculation of the Termination Amount. If the Defaulting Party owes the Termination Amount to the Non-Defaulting Party, the Defaulting Party shall pay the Termination Amount within ten (10) Business Days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. If the Non-Defaulting Party owes the Termination Amount to the Defaulting Party, the Non-Defaulting Party shall pay the Termination Amount within thirty (30) days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. For purposes of the foregoing:

(i) "Costs" means, with respect to the Non-Defaulting Party, the commercially reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the Non-Defaulting Party to a Person other than a Party in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Economic Loss" means, with respect to the Non-Defaulting Party, the amount equal to the DCF of the economic loss, if any (exclusive of Costs), resulting from the early termination of this Agreement. If Seller is the Non-Defaulting Party, its economic loss will be the Remaining Contract Value for the Operating Year contained in Exhibit G, adjusted by subtracting the Seller Replacement Value, as defined in Section 8.4, provided that the amount will under no circumstances be less than zero. In addition, Interconnection Delay Damages, if any, shall not be applied to amounts owed to Buyer under this Section 9.2(b).

If Buyer is the Non-Defaulting Party, Buyer shall use commercially reasonable efforts to find the lowest cost power supply available to replace the estimated power output of the Facility. Economic Loss for the Buyer will be the positive amount, if any, equal to (x) the DCF of the payments the Buyer would be required to make under transactions replacing this Agreement *minus* (y) the DCF of the payments the Buyer would be required to make for Products under this Agreement provided the amount will under no circumstances be less than zero. DCF would start on the actual termination date through the end of the Delivery Period.

If the Non-Defaulting Party is unable to obtain a replacement PPA, or equivalent sale or purchase, within three hundred sixty-five (365) days of the termination date (using commercially reasonable efforts), then the Non-Defaulting Party is not required to enter into any replacement transaction in order to determine its Economic Loss.

9.3 **Limitations**

(a) **GENERAL LIMITATION.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE

OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED AND EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(b) PRE-COMMERCIAL OPERATION DATE LIMITATION. NOTWITHSTANDING ANYTHING SET FORTH IN THIS AGREEMENT TO THE CONTRARY, PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE DELAY LD CAP.

9.4 Indemnification

(a) Indemnification by Seller. To the maximum extent permitted by Applicable Law, Seller shall defend, indemnify, and hold Buyer, its Affiliates, and each of their respective officers, directors, employees, agents, and representatives (collectively, the "Buyer Indemnitees"), harmless from and against all losses, liabilities, damages, fines, penalties, expenses (including reasonable legal costs and attorneys' fees, both at trial and on appeal), actions or suits of any nature whatsoever (collectively, "Losses") actually or allegedly resulting from, or arising out of, or in any way connected with, third party claims relating to the Facility or the performance by Seller of its obligations under this Agreement, for or on account of personal bodily injury to, or death of, or the damage to or destruction of property of, any person or entity, excepting only to the extent such Losses are caused by the gross negligence, willful misconduct or fraud of any person or entity within the Buyer Indemnitees.

(b) Indemnity by Buyer. To the maximum extent permitted by Applicable Law, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Losses actually or allegedly resulting from, or arising out of, or in any way connected with, third party claims relating to the performance by Buyer of its obligations under this Agreement for or on account of personal bodily injury, to, or death of, or the damage to, or destruction of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Losses as may be caused by the gross negligence, willful misconduct or fraud of any person or entity within the Seller Indemnitees. The Buyer's obligations set forth herein is subject to the limitations set forth in Florida Statute §768.28 and any other sovereign immunity defense available to the Buyer pursuant to Florida law.

(c) Additional Cross Indemnity. Without limiting Sections 9.4(a) and 9.4(b), Seller shall release, indemnify and hold harmless the Buyer Indemnitees from and against all Losses related to Product

prior to its delivery by Seller at the applicable Delivery Point, and Buyer, to the extent permitted by law, shall release, indemnify and hold harmless the Seller Indemnitees from and against all Losses related to Product once delivered to Buyer at the applicable Delivery Point, except in each case to the extent such Losses are attributable to a breach of this Agreement or the gross negligence, willful misconduct or fraud by any member of the Buyer Indemnitees or the Seller Indemnitees, respectively, seeking indemnification.

(d) Procedure. An indemnitee that becomes entitled to indemnification or defense under this Section 9.4 must notify the indemnifying Party of any claim or proceeding in respect of which it is to be indemnified or defended as soon as reasonably practicable after the indemnitee obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse the obligation to indemnify or defend except to the extent failure to provide notice adversely affects the indemnifying Party's interests in a material respect. The indemnifying Party shall, within thirty (30) days after the date the indemnifying Party is notified of any such claim, assume the defense thereof with counsel designated by the indemnifying Party but reasonably acceptable to the indemnitee; except that if the defendants in any such action include both the indemnitee and the indemnifying Party or if the claim seeks an order of injunctive relief or other equitable remedies, involves criminal liability, or involves any Governmental Authority, then the indemnitee shall have the right to select and be represented by separate counsel designated by the indemnitee, at the expense of the indemnifying Party. If the indemnifying Party fails to assume the defense of a claim as required under this Agreement, the indemnitee may, at the expense of the indemnifying Party, contest, settle, or pay such claim and the indemnifying Party shall be bound by the results obtained by the indemnitee with respect to such claim. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants

(a) General Representations. Seller represents and warrants to Buyer as of the Effective Date that:

(i) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(ii) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;

(iii) this Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

(iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller or its Affiliates, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a

materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

(v) the execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;

(vi) there is no proceeding under applicable bankruptcy or insolvency law contemplated by Seller or, to Seller's knowledge, threatened against it;

(vii) neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing the Agreement or securing favorable treatment under this Agreement;

(viii) Seller or its Affiliates have or will have all legal rights necessary for the Seller to enter upon and occupy the Site for the purpose of constructing, operating and maintaining the Facility for the Term. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term; and

(ix) Seller or its Affiliate have engaged those professional or other experts it reasonably believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including engineers, attorneys or accountants, that Seller or its Affiliate may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller or such Affiliate. In entering into this Agreement and the undertaking by Seller of the obligations set forth in this Agreement, Seller has investigated and determined that it is capable of performing under this Agreement and has not relied upon the advice, experience or expertise of Buyer in connection with the transactions contemplated by this Agreement.

(b) Additional Seller Representations, Warranties and Covenants. Seller further represents and warrants to Buyer as of each delivery of any Product under this Agreement that:

(i) Seller has (or will have prior to the Commercial Operation Date), to the extent required under Applicable Law, all required regulatory authority to make wholesale sales from the Facility;

(ii) the Product is delivered to Buyer free and clear of any liens, other encumbrances, or defects in title.

10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller as of the Effective Date that:

(i) Buyer is duly organized and validly existing as a municipal corporation under the laws of the Florida, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;

(iii) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

(iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;

(v) the execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;

(vi) there is no proceeding under applicable bankruptcy or insolvency law contemplated by Buyer or, to Buyer's knowledge, threatened against it;

(vii) Buyer is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act; and

(viii) Buyer has engaged those professional or other experts it reasonably believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including engineers, attorneys or accountants, that Buyer may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Buyer. In entering into this Agreement and the undertaking by Buyer of the obligations set forth in this Agreement, Buyer has investigated and determined that it is capable of performing under this Agreement and has not relied upon the advice, experience or expertise of Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement.

10.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

ARTICLE 11 MISCELLANEOUS

11.1 **Notices**

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, delivered in person or sent by reliable overnight courier, or registered or certified mail, postage prepaid to the address of the Party specified in Exhibit C. Notice by

hand delivery is effective at the close of business on the day actually received, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. Notice by overnight United States mail or courier is effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

11.2 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form, and whether or not designated at the time exchanged as confidential.

(b) Permitted Disclosure. Each Party has the right to disclose Confidential Information of the other Party to: (i) a Governmental Authority to the extent legally required by the Governmental Authority or requirement of law, including such disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act, on the condition that, if appropriate, commercially reasonable efforts are undertaken to receive confidential treatment by such Governmental Authority, (ii) its advisors, auditors, legal counsel and insurers, (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information, (iv) its service providers to the extent required in connection with the performance of its obligations hereunder, (v) its partners, investors, lenders and potential investors and lenders; and (vi) potential purchasers (and their representatives) of a direct or indirect interest in the receiving Party or, with respect to Seller, the Facility. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vi) hereof is subject to the condition that the recipient must agree, or otherwise have an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.2.

(d) Remedies. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.2.

(e) Prior Agreements. To the extent that the Parties are party to or otherwise bound by the terms of any agreement regarding confidentiality regarding the subject matter of this Agreement, any such agreement between the Parties is replaced by the confidentiality provisions of this Section 11.2 and in the event that the Parties are otherwise bound by the terms of an agreement regarding confidentiality, as between the Parties, such other agreement will no longer apply to this Agreement, and the obligations of the Parties regarding confidentiality will instead be replaced by the obligations under this Section 11.2.

11.3 Assignment

(a) Generally. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in this Section 11.3, neither Party may assign or otherwise transfer its rights or obligations under this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned or withheld. Any assignment or other transfer in violation of this provision is null and void.

(b) Permitted Assignment by Seller. Notwithstanding the foregoing clause (a), Seller may assign its rights and obligations under this Agreement without the consent of the Buyer, but with prior

written notice, to (i) any Affiliate of Seller or (ii) any transferee or other owner of all or any portion of the Facility. If Seller assigns any of its rights or obligations under this Agreement as permitted by the foregoing clause (ii), Seller shall, to the extent the assignee assumes the liabilities and obligations of Seller under this Agreement, be relieved of such liabilities and obligations. In addition, Seller may subcontract its duties or obligations under this Agreement with the prior written consent of Buyer, which shall not be unreasonably withheld, provided that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

(c) Collateral Assignment by Seller. Notwithstanding any other term of this Agreement to the contrary, Seller, without the consent of Buyer, shall be permitted to assign, transfer, sell, pledge, mortgage or encumber its rights, obligations or interests in this Agreement to create a security interest for the benefit of any one or more lenders or other financing sources (or any agent or trustee acting on their behalf). Buyer will execute such consents, agreements, estoppels, certificates or other documents as reasonably required by Seller in connection with such assignment, provided that any such consent, agreement, certificate or document does not adversely affect the rights or benefits of Buyer in connection with this Agreement. Thereafter, the lender, without the consent of the Buyer, may cause its interest in this Agreement to be sold, assigned transferred or otherwise disposed of to a third party pursuant to the terms governing the applicable security interest

11.4 Waiver of Rights

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing.

11.5 Section Headings

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

11.6 No Third-Party Beneficiary

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties.

11.7 Forward Contract

Each Party acknowledges, intends, and to the extent applicable agrees that: (a) this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” and each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; (b) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Credit Support to any amounts due and owing to such Party, constitute “settlement payments” within the meaning of the United States Bankruptcy Code and all transfers of Credit Support by a Party or on its behalf under this Agreement constitute “margin payments” within the meaning of the United States Bankruptcy Code; and (c) its rights under Section 9.2 of this Agreement constitute a “contractual right to liquidate, terminate or accelerate” or “contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts” within the meaning of the United States Bankruptcy Code.

11.8 **Governing Law; Jury Waiver**

(a) Governing Law. THE LAWS OF THE STATE OF FLORIDA (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

(b) Jury Waiver. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE IMPLEMENTATION OF THIS AGREEMENT.

11.9 **Venue**

The Parties submit to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, unless such court refuses jurisdiction, in which case the Parties submit to the exclusive jurisdiction of the courts of the State of Florida sitting in Polk County, Florida. Each Party waives (i) any objection it may have at any time to the laying of any suit, action, or other proceedings brought in any such court; (ii) any claim that such suit, action, or other proceeding has been brought in an inconvenient forum; and (iii) any right to object, with respect to such suit, action, or other proceeding, that the court does not have any jurisdiction over the Party.

11.10 **Nature of Relationship**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

11.11 **Severability**

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

11.12 **Change in Law**

If any Change in Law occurs that has a material adverse effect on the cost to Seller or Buyer of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then either Party shall have the right to terminate this Agreement without further liability except with respect to payment of amounts accrued prior to termination.

11.13 **Counterparts**

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute but a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes.

11.14 **Dispute Resolution**

Any dispute under this Agreement between Seller and Buyer must, at the request of any Party, be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable. The negotiation between the Parties and any documents exchanged in connection with the negotiation are confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law evidentiary rules or doctrines. In the event the Parties are unable to satisfactorily resolve the dispute within fifteen (15) days of such referral or such other period as the Parties may mutually agree, subject to any extensions of time as may be mutually agreed upon in writing, either Party may pursue such remedies as may be available to it under applicable law or in equity in order to resolve such dispute. Notwithstanding the foregoing, a request to resolve a dispute on an informal basis does not restrict a Party’s right to bring an action seeking injunctive relief in respect of this Agreement.

11.15 **Construction**

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language.

11.16 **Entire Agreement; Integration; Amendment and Restatement**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof is binding upon the Parties, and neither Party will be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of each Party.

[signature page follows]

The Parties have caused this Power Purchase Agreement to be executed by their duly authorized representatives as of the Effective Date.

SELLER:

EDGE SOLAR LLC

By: _____
Name: _____
Title: _____

Attest:

By: _____

(Printed Name/Title)

BUYER:

CITY OF LAKELAND, a municipality organized and existing in accordance with the laws of the State of Florida, acting by and through its municipal utility, LAKELAND ELECTRIC

By: _____
Name: H. William Mutz
Title: Mayor

Attest:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Palmer C. Davis, City Attorney

EXHIBITS

| | |
|------------------|-----------------------------|
| <u>Exhibit A</u> | Description of the Facility |
| <u>Exhibit B</u> | Insurance Requirements |
| <u>Exhibit C</u> | Notice Information |
| <u>Exhibit D</u> | Required Facility Documents |
| <u>Exhibit E</u> | Form of Invoice |
| <u>Exhibit F</u> | Remaining Contract Value |

Exhibit A

DESCRIPTION OF THE FACILITY

| | |
|---|---|
| Facility Name: | Edge Solar |
| Anticipated Nameplate Capacity: | 74.8MWac |
| Location: | Polk County, Florida |
| Technology: | Solar photovoltaic facility. |
| BESS Integration | The Facility design will accept AC-coupled storage for future integration of battery energy storage systems. |
| Description of Interconnection Facilities | Edge Solar shall connect to Lakeland Electric's 69kV Transmission network between its Bridgewater and Orangedale Substations. Edge Solar shall own and maintain the step-up substation and the point of demarcation between Edge Solar and Lakeland Electric shall be the Lakeland Electric's owned and supplied 69kV high-voltage breaker. |
| Description of the Site: | Approximately 450 acres situated in the City of Lakeland, Florida and beginning at the intersection of Highway 33 and University Boulevard. |
| Map: | See attached |

Legend
— Edge Solar Boundary



Exhibit B

INSURANCE REQUIREMENTS

Each Party will maintain or cause to be maintained in force throughout the performance of any part of the Work and for as long thereafter as necessary to support any post completion obligations of such party, insurance described below with insurance companies having at least an A.M. Best A-VII rating (or equivalent, if not rated by A.M. Best) excluding Workers Compensation. The required liability insurance can be met under a primary policy, an excess policy, self-insurance, or any combination thereof.

In all insurance policies, whether or not coverage is required by this Agreement, each Party agrees to waive and will require its insurers to waive, by subrogation or otherwise, all rights of recovery they may have against the other Party, but only to the extent of the risks and liabilities assumed under this Agreement and only to the extent permitted by law.

Notwithstanding the insurance requirements below, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for a Party, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1. Workers' Compensation and Employer's Liability

Workers' Compensation insurance complying with the state and federal and regulations having jurisdiction over each employee and alternate employer endorsement in favor of the other Party, and Employer's Liability with limits of 1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

2. General Liability

Commercial General Liability insurance on an occurrence form with limits of not less than \$1,000,000 per occurrence, and general and products-completed operations annual aggregates of \$1,000,000, for bodily injury and property damage, including coverage for premises-operations, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, sudden and accidental pollution, and explosion and collapse and underground.

3. Automobile Liability

Automobile Liability insurance with limits of not less than \$1,000,000 each accident for bodily injury and property damage to include coverage for any auto (including owned, non-owned, and hired vehicles)

4. Excess or Umbrella Liability

Excess or Umbrella Liability insurance with limits of not less than \$5,000,000 each occurrence, and annual aggregates of \$5,000,000, for bodily injury and property damage covering excess of Employer's Liability, General Liability and Automobile Liability insurance described herein.

Exhibit C

NOTICE INFORMATION

If to Buyer:

Address: 501 E Lemon St, Lakeland, FL 33801
Attn: Sandra Ruede – Fuels Manager
Email: Sandra.Ruede@LakelandElectric.com

With a copy to:

Address: 501 E Lemon St, Lakeland, FL 33801
Attn: Mike Dammer – Emerging Technology Manager
Email: Michael.Dammer@LakelandElectric.com

If to Seller:

Address: One Williams Center, Tulsa, OK 74172
Attn: Michael Fonk - Commercial, New Energy Ventures
Email: Michael.fonk@williams.com

With a copy to:

Address: 2800 Post Oak Blvd., Houston, TX 77056
Attn: GeJuan Cole - Operations, New Energy Ventures
Email: Gejuan.k.cole@williams.com

Exhibit D

REQUIRED FACILITY DOCUMENTS

| Responsible Agency | Permit /Coordination |
|---|---|
| Federal | |
| USACE / Florida Division of Historical Resources (FDHR) | National Historic Preservation Act (NHPA), Section 106 |
| U.S. Fish and Wildlife Service (USFWS) | Bald and Golden Eagle Protection Act (BGEPA) of 1940, as amended |
| U.S. Fish and Wildlife Service (USFWS) | General Section 7 |
| USFWS | Migratory Bird Treaty Act (MBTA) of 1918, as amended |
| State | |
| Florida DEP (FDEP) | Environmental Resource Permit (ERP) |
| FDEP | National Pollutant Discharge System (NPDES) Generic Permit for Stormwater Discharge from Land and Small Construction Activities |
| Florida Fish and Wildlife Commission (FWC) | Gopher Tortoise Relocation Permit |
| Florida Department of Transportation | Driveway Permit (Combee Road) |
| Local | |
| City of Lakeland | Conditional Use Permit |
| City of Lakeland | Solar Photovoltaic Permit |
| Construction | |
| City of Lakeland | Building Permit |
| City of Lakeland | Driveway Permit (University Blvd.) |
| City of Lakeland | Electrical Permit |

Exhibit E

FORM OF INVOICE

xxx/15/20xx

Lakeland Electric
Address

Edge Solar, LLC

| | |
|---|-----------------|
| Metered Output (in MWh) | xxx |
| Rate | <u>\$ 45.50</u> |
| Total Billing for services provided from xxx to xxx | \$xxxx |

Payment terms, net 30

Banking Information to be provided at later date

Exhibit F

Remaining Contract Value

Remaining Contract Value at end of Contract Year:

| Year | Remaining Contract Value |
|-------------|---------------------------------|
| 1 | \$134,894,296 |
| 2 | \$122,524,886 |
| 3 | \$110,047,112 |
| 4 | \$97,446,639 |
| 5 | \$84,713,794 |
| 6 | \$72,050,211 |
| 7 | \$69,962,672 |
| 8 | \$67,732,612 |
| 9 | \$65,348,867 |
| 10 | \$62,789,787 |
| 11 | \$60,060,780 |
| 12 | \$57,138,903 |
| 13 | \$54,008,978 |
| 14 | \$50,642,338 |
| 15 | \$47,044,852 |
| 16 | \$43,186,039 |
| 17 | \$39,045,256 |
| 18 | \$34,584,411 |
| 19 | \$29,809,769 |
| 20 | \$24,680,701 |
| 21 | \$19,169,127 |
| 22 | \$13,224,264 |
| 23 | \$6,852,661 |

