

Execution Version

POWER PURCHASE AGREEMENT

BETWEEN

CITY OF COLUMBIA, MISSOURI

AND

BOONE STEPHENS SOLAR I, LLC

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “Agreement”) is by and between the **City of Columbia, Missouri**, a Missouri municipal corporation (“Buyer”), and **Boone Stephens Solar I, LLC**, a Delaware limited liability company (“Seller”), and is entered into on the date of the last signatory below (the “Effective Date”). Buyer and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS Seller desires to develop, design, construct, own and operate a renewable electric generating facility with an expected total nameplate capacity of approximately 64 MW, and which is further defined below as the “Facility”; and

WHEREAS Seller intends to locate the Facility at the Site, and to interconnect the Facility with the Interconnection Provider’s electrical system; and

WHEREAS Seller desires to sell and deliver to Buyer, at the Point of Delivery, the Products produced by or resulting from the Facility, and Buyer desires to buy the same from Seller.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

1 DEFINITIONS

1.1 As used in this Agreement, the following definitions shall have the respective meanings set forth below.

“Affiliate” means, with respect to any Person, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with such designated Person, (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class or voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person, and (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of any class of voting securities or in which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to a Person, means 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 or by contract or otherwise. For the avoidance of doubt, the term “Affiliate” shall not include any Lender.

“Agreement” has the meaning provided in the preamble.

“Assessment Date” has the meaning provided in Section 4.4.1.

“Bankruptcy Proceeding” means, with respect to a Person, that such Person (a) is dissolved (other than pursuant to a consolidation, amalgamation, or merger); (b) becomes insolvent or is generally unable to pay its debts or generally fails or admits in writing its general inability to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of creditors; (d) institutes or has instituted against it a proceeding seeking a judgment

of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation; (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation, or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for it or substantially all its assets; (g) except with respect to the rights of Lenders hereunder, has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced, or sued on or against all or substantially all of its assets; (h) causes or is subject to any event with respect to it which, under the applicable Legal Requirements of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts, and in the case of clauses (a) to (h) inclusive where the act or action taken is involuntary, such act or action is not dismissed within sixty (60) days of its commencement.

"Billing Period" means any partial or full calendar month within the Term.

"Business Day" means any calendar day that is not a Saturday, a Sunday, or a holiday on which banks in the State of New York or the state where the Facility is located are permitted to close, beginning at 8:00 a.m. PT ending at 5:00 p.m. PT.

"Buy Down Payment" has the meaning provided in Section 3.10.

"Buyer" has the meaning provided in the preamble.

"Buyer Event of Default" has the meaning provided in Section 21.2.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Facility is located.

"Capacity Deficiency" means, at any time, the amount (expressed in MW), if any, by which the Installed Capacity is less than the Minimum Facility Capacity.

"Change in Legal Requirements" means, after the Effective Date, any passage, enactment, modification, revision, repeal, addendum, interpretation or other change in any Legal Requirement affecting the rights or obligations of Buyer or Seller under this Agreement or increasing the costs that would be required to be borne by a Party to perform its obligations under this Agreement.

"Commercial Operation" means the condition existing when (a) the Facility has been completed to the Minimum COD Facility Capacity and is ready to produce and deliver Energy to Buyer on a continuous and reliable basis and (b) the Facility has been tested and accepted by Seller.

"Commercial Operation Date" or "COD" means the date (i) designated in the Completion Notice to Buyer as the date when Commercial Operation occurred or (ii) such other date determined according to Section 3.6.

“Commercial Operation Termination Deadline” means twelve (12) months following the Expected Commercial Operation Date; provided, that such date shall be extended on a day-for-day basis to the extent that the Commercial Operation Date is delayed as a result of Delay Conditions.

“Committed Energy” means the amounts in MWh provided in Exhibit C, as may be adjusted pursuant to Section 3.10.

“Completion Notice” has the meaning provided in Section 3.5.

“Conditions Precedent Deadline” means the date that is the twenty (20) month anniversary of the Effective Date.

“Contract Price” has the meaning provided in Section 4.2.

“Costs” means, with respect to a non-defaulting Party after terminating this Agreement in accordance with Section 21.6, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by such Party, either in terminating any arrangement pursuant to which it has hedged its obligations hereunder or 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.

“Creditworthy Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with a senior unsecured and credit-unenhanced long term debt rating equivalent to (i) Baa1 or higher as determined by Moody’s and (ii) BBB+ or higher as determined by S&P, or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to Buyer. In addition, if such unsecured debt rating of such institution is exactly equivalent to Baa1 or BBB+, as applicable, such institution must not be on negative credit watch by the applicable rating agency.

“Default Interest Rate” means the prime rate on corporate loans at large U.S. money center commercial banks as set forth in the Wall Street Journal “Money Rates” table under the heading “Prime Rate,” or any successor thereto, on the first date of publication for the applicable calendar month plus two hundred (200) basis points; provided, however, that the Default Interest Rate shall never exceed the maximum rate permitted by applicable Legal Requirements.

“Default Performance Requirement” means fifty percent (50%) of the Committed Energy during a Performance Measurement Period, less any Energy that could reasonably have been produced by the Facility and delivered at the Point of Delivery during the Performance Measurement Period, but was not actually produced due to (i) Force Majeure (ii) an Instructed Operation, (iii) a Forced Outage, or (iv) suspension of deliveries due to a Buyer Event of Default.

“Delay Conditions” means any delay caused by or resulting from Force Majeure, an Operational Order, or any act or omission of Buyer or any of its Related Persons (including any Buyer Event of Default or other breach by Buyer of this Agreement).

“Dispute” has the meaning provided in Section 20.1.

“Dispute Notice” has the meaning provided in Section 20.1.

“Early Termination Date” has the meaning provided in Section 21.6.

“Effective Date” has the meaning provided in the preamble.

“Energy” means the net electric energy in megawatt hours (MWh) generated from the Facility and is delivered to the Point of Delivery.

“Environmental Benefits” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (a) that are at any time recognized or deemed of value, or both, by Buyer, applicable Legal Requirements, or any voluntary or mandatory program of any Governmental Authority or other Person and (b) that are attributable to (i) generation by the Facility required to be delivered by Seller to Buyer during the Term and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of energy generation. “Environmental Benefits” include any of the same arising out of legislation or regulation concerned with the reduction or offset of oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or other crediting, including “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency (or any successor agency), or any state or federal entity given jurisdiction over a program involving transferability of Environmental Benefits; provided, however, that “Environmental Benefits” shall not include any Tax Benefits.

“Expected Commercial Operation Date” has the meaning provided in Section 3.1.

“Expected Facility Capacity” has the meaning provided in Section 2.3.

“Extended Deadline” has the meaning provided in Section 2.2.

“Event of Default” means a Buyer Event of Default or a Seller Event of Default, as the context may require.

“Facility” means Seller’s solar-powered electric generating facility and Seller’s Interconnection Facilities, as identified and described in Exhibit A.

“Force Majeure Event” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event is not reasonably foreseeable, and despite the exercise of reasonable efforts, cannot be prevented or avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events otherwise comply with the requirements of the preceding sentence, a Force Majeure Event may include an act of God or the elements, such as heavy rains, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties

caused or suffered by a Party or any third party (provided that strikes on a national or other larger regional level, shall not be considered Force Majeure Events); site conditions (including subsurface conditions, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); or the inability of any warranty provider for the Facility to fulfill its warranty due to bankruptcy or other end of going concern event. Notwithstanding the foregoing, events described in the preceding sentences that affect any Utility, or another third Person shall also be considered "Force Majeure Events," to the extent such events otherwise meet the requirements of Force Majeure Events. Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic (including Buyer's ability to buy energy at a lower price or Seller's ability to sell energy at a higher price), (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above, (iii) any Change in Legal Requirements, including one that results in the devaluation of, or inability of Buyer to utilize, Capacity Attributes, RECs or any other Environmental Benefits transferred pursuant to the terms of this Agreement, or (iv) events that result from the claiming Party's negligent act, negligent omission, intentional act or other willful wrongful act.

"Forced Outage" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Point of Delivery, and that is not the result of a Force Majeure Event or Buyer Event of Default (or other breach of this Agreement).

"Future Environmental Benefits" shall have the meaning set forth in Section 13.2.

"Gains" means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed to be the gain (if any) to such non-defaulting Party represented by the difference between the present value of the payments or deliveries required to be made during the remaining term of this Agreement and the present value of the payments or deliveries that would be required to be made under a transaction(s) replacing this Agreement.

"Governmental Approval" means any valid waiver, exemption, variance, franchise, permit, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority having jurisdiction over the matter in question.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Indemnified Party" has the meaning provided in Section 23.1.

"Indemnifying Party" has the meaning provided in Section 23.1.

“Installed Capacity” means, on any day, the aggregate nameplate capacity of the Facility in MW that satisfies the conditions of Commercial Operation.

“Instructed Operation” means any action or operation necessary to comply with an Operational Order.

“Interconnection Agreement” means the agreement between Seller and Interconnection Provider that contains the rights and obligations of those Parties with respect to the interconnection of the Facility with the Transmission System and prescribes the methods and procedures to be used for the safe operation and maintenance of the Interconnection Facilities.

“Interconnection Facilities” means Interconnection Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Interconnection Provider” means the Person that owns and operates the transmission lines, Interconnection Provider’s Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

“Interconnection Provider’s Interconnection Facilities” means the Interconnection Provider’s facilities necessary to connect the Transmission System to the Facility, as described in the Interconnection Agreement, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

“Legal Requirements” means, without limitation, any national, state, local or municipal law, statute, rule, regulation, charter or constitutional provision, ordinance, treaty, order, decree, judgment, decision, common law, holding, injunction, Governmental Approval or other requirement of a Governmental Authority. Unless the context clearly requires otherwise, the term “Legal Requirement” shall include each of the foregoing (and each provision thereof) as in effect at the time in question, including any amendments, supplements, replacements, or other modifications thereto or thereof, and whether or not in effect as of the date of this Agreement.

“Lender” means any Person (a) providing direct or indirect senior or subordinated construction, interim or long-term debt or equity financing or refinancing (including any Tax Equity Financing) to Seller, to any permitted assignee of all or any portion of this Agreement, or to any Affiliates of Seller for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing), including any equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller (including any participant in a Tax Equity Financing), any permitted assignee of all or any portion of this Agreement, or Affiliates of Seller, and any trustee or agent acting on their behalf, (b) providing direct or indirect interest rate protection agreements to hedge any of the foregoing obligations and/or (c) participating directly or indirectly in a lease financing, including any sale leaseback or leveraged leasing structure, with respect to the Facility, and of which Seller has provided Buyer with written notice.

“Losses” means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this

Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) will be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments or deliveries required to be made under this Agreement and the present value of the payments or deliveries that would be required to be made under transactions replacing this Agreement, each of which shall be calculated for the remaining Term of the Agreement. If Buyer is the non-defaulting Party, its economic losses will include the cost of replacing the Capacity Attributes and RECs (and Future Environmental Benefits which the Parties agree will be transferred to Buyer pursuant to Section 13.2) lost as a result of such termination.

“Lost MW” has the meaning provided in Section 3.10.

“Metering Device(s)” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Energy output from the Facility.

“Minimum COD Facility Capacity” means a total aggregate nameplate capacity of the Facility equal to eighty percent (80%) of the Expected Facility Capacity.

“Minimum Facility Capacity” means a total aggregate nameplate capacity of the Facility equal to ninety percent (90%) of the Expected Facility Capacity.

“Minimum Performance Requirement” means seventy-five percent (75%) of the Committed Energy during a Performance Measurement Period, less any Energy that could reasonably have been produced by the Facility and delivered at the Point of Delivery during the Performance Measurement Period, but was not actually produced due to (i) Force Majeure (ii) an Instructed Operation, (iii) an Outage, or (iv) suspension of deliveries due to a Buyer Event of Default.

“MISO” means the Midwest Independent Transmission System Operator, Inc. and any successor entity thereto.

“Missouri Sunshine Law” has the meaning provided in Article 18.

“Moody’s” means Moody’s Investors Service, Inc.

“MW” means a megawatt (AC).

“MWh” means megawatt hour.

“Objection Period” has the meaning provided in Section 3.6.

“Operational Order” means an instruction or directive issued by the Transmission Provider, the Interconnection Provider, or any Governmental Authority with which a Party must comply or which instruction or directive a Party has no discretion to avoid.

“Outage” means a Forced Outage or Planned Outage.

“Party” or “Parties” has the meaning provided in the preamble.

“Party Representative” or “Parties’ Representatives” has the meaning provided in Section 20.1.

“Performance Measurement Period” has the meaning provided in Section 4.4.1.

“Performance Security” means, as applicable, cash, performance bond, letter of credit or guaranty that Seller is required to establish, post and maintain, pursuant to Article 10, as security for Seller’s performance under this Agreement, as applicable.

“Performance Shortfall Damages” has the meaning provided in Section 4.4.1.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“Planned Outage” means any outage with respect to the Facility that is (a) not a Forced Outage and (b) not the result of a Force Majeure Event or Buyer Event of Default (or other breach of this Agreement).

“Point of Delivery” means the location where the Facility is interconnected with the Transmission System at the Bolstad substation, which specifically shall be defined as the point of change in ownership between the Interconnection Provider’s equipment and Seller’s equipment identified in the Interconnection Agreement. The Point of Delivery is more specifically described in Exhibit A.

“Post-COD Performance Security” has the meaning provided in Section 10.1.

“Pre-COD Performance Security” has the meaning provided in Section 10.1.

“Products” means all Energy, Capacity Attributes, RECs, and any Future Environmental Benefits which the Parties agree will be transferred to Buyer pursuant to Section 13.2.

“PT” means Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the time zone in which the Facility is located.

“RECs” or “Renewable Energy Credits” means a certificate of proof associated with Missouri Revised Statutes, Sections 393.1020, et. seq.

“Related Persons” means, in respect of a referenced Person, (a) its Affiliates, (b) its subcontractors and (c) the respective directors, officers, employees and agents of the referenced Person and the Persons described in clauses (a) or (b).

“Replacement Price” means, for each Performance Measurement Period, (a) the average of Buyer’s load zone energy price for the daily index for such Performance Measurement Period, minus (b) the average Contract Price for such Performance Measurement Period.

“Required Creditworthiness” means having a credit rating of at least (i) Baa3 from Moody’s and BBB- from Standard and Poor’s or (ii) Baa3 from Moody’s or BBB- from Standard and Poor’s if such Person is rated by either Moody’s or Standard and Poor’s, but not both.

“Seller” has the meaning provided in the preamble.

“Seller Event of Default” has the meaning provided in Section 21.1.

“Seller Guarantor” has the meaning provided in Section 10.5(c).

“Seller’s Interconnection Facilities” means the Seller’s facilities necessary to connect the Facility to the Transmission System, as described in the Interconnection Agreement, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

“Seller’s Annual Test” has the meaning provided in Section 9.3.

“Seller’s Metering Device” has the meaning provided in Section 9.1.

“Settlement Amount” means, with respect to the non-defaulting Party, the Losses and Costs less any Gains, expressed in U.S. dollars, which such Party incurs as a result of a termination of this Agreement in accordance with Section 21.6; provided, that if the calculation above results in a negative number, the result of such calculation shall be deemed to be zero.

“Site” means the parcels of real property located in Boone County, Missouri, on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility, as more specifically described in Exhibit A.

“Standard & Poor’s” or “S&P” means Standard & Poor’s Rating Group, a division of McGraw Hill, Inc.

“Tax Benefits” means (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility, or energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (b) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Facility, and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“Tax Equity Financing” means with respect to Seller or its Affiliates or the Facility, any transaction or series of transactions resulting in a Person (or successor in interest or assignee of such Person) providing financing or refinancing for the Facility to Seller or its Affiliates and whose return is substantially derived from Tax Benefits or Tax attributes, including interest deductions, accelerated depreciation and Tax credits (including investment tax credits), in respect of the ownership interest in Seller, its Affiliates or the Facility, and includes any leasing transaction (including a sale-leaseback, inverted lease or the like) that has the result of the foregoing.

“Taxes” has the meaning provided in Section 6.1.

“Term” means the period of time during which this Agreement shall remain in full force and effect, and which is further defined in Section 2.1.

“Termination Payment” has the meaning provided in Section 21.7.

“Test Energy” has the meaning provided in Section 3.8.

“Transmission Provider” means the Person that operates the Transmission System, or to the extent applicable, the owner of the Transmission System.

“Transmission System” means the facilities utilized to provide Transmission Services.

“Transmission Services” means the transmission and other services required to transmit Energy to or from the Point of Delivery.

1.2 Rules of Construction. The capitalized terms listed in this Article 1 shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article 1 shall have meanings as commonly used in the English language. Words and abbreviations not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- 1.2.1 The titles and headings in this Agreement are inserted for convenience only and shall not be used for the purposes of interpreting this Agreement.
- 1.2.2 The masculine shall include the feminine and neuter.
- 1.2.3 The words “herein,” “hereof” and “hereunder” and words of similar import when used in this Agreement, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” are to articles, sections, or exhibits of this Agreement.
- 1.2.4 Unless otherwise provided, all references in this Agreement to contracts, agreements, or other documents shall be deemed to mean those contracts, agreements, or documents as the same may be modified, supplemented or amended from time to time in accordance with their terms. All references to applicable Legal Requirements shall be deemed to mean such Legal Requirements as the same may be modified, supplemented or amended from time to time.
- 1.2.5 The Exhibits attached hereto are incorporated in and are part of this Agreement; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall control. References to any Exhibit means the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments included therewith.

- 1.2.6 The term “knowledge” and any other similar expressions, means knowledge after due inquiry.
- 1.2.7 The words “include,” “includes” and “including” are not limiting.
- 1.2.8 The term “shall” is understood to be mandatory, meaning must, and the term “may” is understood to be permissive.
- 1.2.9 Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.
- 1.2.10 Any reference to a statute, regulation or protocol shall be deemed to include any amended or successor provision to the extent such amended or successor provision is consistent with the intent and effect of the originally referenced provision.
- 1.2.11 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.
- 1.2.12 The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where this Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- 1.2.13 The Parties recognize that this Agreement does not provide for the supply of any electric service by Buyer to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of start-up and shutdown power, house power and maintenance power. The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this Agreement are not binding upon the supplier of such electric services. Notwithstanding any other provision in this Agreement, nothing in the arrangements for the supply of retail electric services to the Facility shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and the supplier of such retail electric services.

2 CONTRACT TERM; CONDITIONS PRECEDENT; GENERAL

2.1 Term. This Agreement shall become effective as of the Effective Date, and shall remain in full force and effect until the twentieth (20th) anniversary of the Commercial Operation Date, subject to any early termination provisions set forth herein (the "Term"). Seller and Buyer may extend this Agreement for additional terms upon mutual written agreement. The provisions of this Agreement shall continue in effect after the expiration or earlier termination of this Agreement to the extent provided in Section 24.12.

2.2 Conditions Precedent. Seller's obligation to construct the Facility and to sell and deliver the Products to Buyer is expressly conditioned upon the satisfaction in full (or written waiver) of all of the conditions set forth in this Section 2.2:

- (a) Seller shall have obtained all Governmental Approvals, on terms and conditions acceptable to Seller in its reasonable discretion, required from any Governmental Authority, including those for the development and construction of the Facility;
- (b) Seller shall have obtained a right of way, on terms and conditions acceptable to Seller in its reasonable discretion, from the Site to the Point of Delivery; and
- (c) conditions or obligations imposed in connection with network upgrades to Interconnection Provider's Interconnection Facilities or the Transmission System, when complied with, could not reasonably be likely to increase the cost of designing, permitting, constructing, interconnecting, maintaining and/or operating the Facility by more than two million dollars (\$2,000,000).

Seller shall use commercially reasonable efforts to achieve the satisfaction of the Conditions Precedent by the Conditions Precedent Deadline or Extended Deadline, as applicable. If the conditions precedent in this Section 2.2 are not satisfied or waived in writing by Seller on or prior to the Conditions Precedent Deadline, upon thirty (30) days' notice to the other Party, either Party may terminate this Agreement without penalty and without triggering the default provisions in this Agreement or incurring any liability under this Agreement whatsoever, in which event the Parties shall have no further obligations to the other hereunder, except for those obligations which specifically survive the termination of this Agreement, and Buyer shall promptly release the Performance Security (including any accumulated interest, if applicable) to Seller; provided, that Seller may, in its sole discretion, elect to extend the Conditions Precedent Deadline by an additional six (6) months (the "Extended Deadline") by posting additional Pre-COD Performance Security in an amount equal to two thousand five hundred dollars per MW (\$2,500/MW) of the Expected Facility Capacity. Each Party's right to terminate this Agreement pursuant to this Section 2.2 shall be waived and of no further force and effect thirty (30) days after the later of (a) Conditions Precedent Deadline, or, (b) if applicable, the Extended Deadline.

2.3 Expected Facility Capacity. Seller shall develop, construct, own, operate, and maintain the Facility, which shall have a designed maximum output of 64 MW at the Point of Delivery (the "Expected Facility Capacity").

2.4 Location. The Facility shall be located on the Site. A scaled map that identifies the location of the Facility, the location of the Point of Delivery and the location of the important ancillary facilities and Interconnection Facilities, is included in Exhibit B.

2.5 General Design of the Facility. Seller shall construct the Facility in all material respects according to all applicable Legal Requirements and the Interconnection Agreement.

3 COMMERCIAL OPERATION

3.1 Expected Commercial Operation Date. Seller shall achieve, at its sole cost and expense, Commercial Operation of the Facility no later than December 31, 2023 (the "Expected Commercial Operation Date"). The Expected Commercial Operation Date will be extended to the extent attributable to any Delay Condition. Seller may declare that Commercial Operation has been achieved if the Installed Capacity is less than the Expected Facility Capacity but equal to or greater than the Minimum COD Facility Capacity; provided, that Seller shall, until the Commercial Operation Termination Deadline, use its commercially reasonable efforts to effect commercial operation of such additional equipment as is necessary to achieve an Installed Capacity equal to the Expected Facility Capacity. Each such additional installation shall achieve commercial operation by Seller's delivery to Buyer of a Seller certificate that the equipment making up such installation is complete in all material respects, commissioned and capable of continuous operation. Notwithstanding the occurrence of the Commercial Operation Date when the Facility has an Installed Capacity lower than the Expected Facility Capacity, all of the rights and duties of the Parties applicable to the period after the Commercial Operation Date shall commence or continue, as the case may be, as of such date, including delivery of and payments for Energy under Section 4.1.

3.2 Design, Development, and Construction. Seller shall have sole responsibility for the design and construction of the Facility and Seller's Interconnection Facilities and all related metering facilities, including the obligation to perform all studies, including environmental studies, pay all fees, obtain all necessary permits and execute all necessary agreements with the Interconnection Provider and interconnecting transmission owners necessary for the ownership, construction, operation and maintenance of the Facility and delivery of Energy in accordance with the terms hereof.

3.3 Progress Reporting. Commencing upon the end of the first calendar month after the Effective Date, Seller shall submit to Buyer, no later than the tenth (10th) Business Day of each calendar month and, commencing with the week that is two (2) months prior to the projected Commercial Operation Date, on the first Business Day of each calendar week, in each such case until the Commercial Operation Date is achieved, progress reports in a form reasonably acceptable to the Parties.

3.4 Buyer's Rights During Construction. Buyer shall have the right to monitor the construction, start-up and testing of the Facility during normal business hours, provided Buyer provides Seller with advance written notice and does not interfere with Seller's activities, and Seller shall comply with all reasonable requests of Buyer with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Buyer during and after completion of construction. All persons visiting the Facility

on behalf of Buyer shall comply with all of Seller's applicable safety and health rules and requirements that are provided or identified to such persons. Buyer's technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Facility.

3.5 Completion Notice. Seller will provide Buyer with a written notice when the Facility has achieved Commercial Operation (the "Completion Notice").

3.6 Objections to Declaration of COD. If, after Seller provides a Completion Notice, Buyer believes, in good faith, that Commercial Operation has not been satisfied, Buyer shall, as soon as practicable but in no event more than ten (10) Business Days after receipt of the Completion Notice, (the "Objection Period") provide a written objection to Seller stating with specificity those conditions that Buyer believes, in good faith, have not been satisfied and the basis for such conclusion. If Buyer fails to provide a written objection within the Objection Period, the Commercial Operation Date shall be the date set forth in the Completion Notice. If Buyer provides a written objection within the Objection Period, then the Parties shall promptly confer for the purpose of resolving any dispute with respect to any conditions. If the Parties reach agreement, the Commercial Operation Date shall be the date agreed by the Parties. If the Parties do not reach agreement, the matter shall be resolved in accordance with the dispute resolution procedures set forth in Article 20.

3.7 Interconnection. Seller shall be responsible for filing all interconnection requests.

3.8 Test Energy. Prior to the Commercial Operation Date, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all interest, right, and title to all of the Energy delivered to the Point of Delivery (the "Test Energy"). Buyer shall be charged for Test Energy at a rate equal to seventy-five percent (75%) of the Contract Price.

3.9 Commercial Operation Delay. If the Commercial Operation Date is not achieved by Seller on or before the Commercial Operation Termination Deadline, Buyer and Seller will each thereafter have the right, until the Commercial Operation Date has been achieved, to terminate this Agreement upon written notice to the other Party as its sole and exclusive remedy.

3.10 Seller Buy Down. For each MW of Capacity Deficiency that has not achieved Commercial Operation on or before the earlier of (i) the date on which Seller delivers written notice to Buyer that the then-remaining Capacity Deficiency will not achieve Commercial Operation, which notice may be delivered by Seller at any time following the Commercial Operation Date in Seller's sole discretion, and (ii) the Commercial Operation Termination Deadline (each such remaining MW of Capacity Deficiency, a "Lost MW"), Seller shall pay to Buyer on the fifth (5th) Business Day following the Commercial Operation Termination Deadline an amount equal to forty thousand dollars (\$40,000) per Lost MW (the "Buy Down Payment"). Buyer's sole and exclusive remedy, and Seller's sole liability, for Lost MWs shall be limited to the Buy Down Payment provided for in this Section 3.10. Upon Buyer's receipt of the Buy Down Payment, the Committed Energy for each Performance Measurement Period shall be reduced pro rata per Lost MW.

4 SALE AND PURCHASE OF POWER

4.1 Sale and Purchase. Beginning on the Commercial Operation Date, Seller shall deliver to Buyer at the Point of Delivery, and Buyer shall purchase from Seller at the Point of Delivery, all Products. Unless prevented from doing so by an Outage, Operational Order, or to the extent required by any Legal Requirements, Seller will not commit less than the entire output of the Facility to Buyer, nor sell any Products to any Person other than Buyer. Buyer shall have the exclusive right to resell any Products from the Facility. Other than the Products, Seller shall have no obligation to deliver to Buyer, and Buyer shall have no entitlement to, any products, attributes, or benefits produced in connection with the Facility.

4.2 Contract Price. Commencing on the Commercial Operation Date, Buyer shall pay Seller for Energy delivered to Buyer by Seller at the Point of Delivery at an energy payment rate equal to thirty-one dollars and sixty-five cents per MWh (\$31.65/MWh) (the “Contract Price”). For the avoidance of doubt, Buyer shall not be obligated to make any payment to Seller under this Section 4.2 for any energy which, regardless of reason or event of Force Majeure affecting either Party, (i) is not generated exclusively by the Facility, (ii) is not measured by the electric metering device(s) installed pursuant to Section 9.1 or (iii) is not delivered to Buyer at the Point of Delivery.

4.3 Exceptions to Buyer and Seller Performance. Buyer shall not be obligated to schedule, take or pay for Products to the extent of and during (a) Force Majeure Events, (b) periods covered by an Operational Order (but only to the extent required by such Operational Order), or (c) a Seller Event of Default. Seller shall not be obligated to sell and deliver Products to the extent of and during (i) Force Majeure Events, (ii) periods covered by an Operational Order (but only to the extent required by such Operational Order), (iii) a Buyer Event of Default, or (iv) any Outage that is consistent with the terms and conditions of Article 8.

4.4 Minimum Performance Requirement.

4.4.1 Commencing on the fourth (4th) anniversary of the Commercial Operation Date and annually thereafter (the “Assessment Date”), Seller shall be required to deliver to Buyer during each period of thirty-six (36) consecutive months immediately preceding such Assessment Date (each, a “Performance Measurement Period”), Energy in an amount equal to at least the Minimum Performance Requirement. If the amount of Energy delivered to Buyer at the Point of Delivery during such Performance Measurement Period is less than the Minimum Performance Requirement, Seller shall pay to Buyer an amount equal to the Replacement Price per MWh for the deficit amount of Energy and associated RECs (and Future Environmental Benefits which the Parties agree will be transferred to Buyer pursuant to Section 13.2) below the Minimum Performance Requirement (“Performance Shortfall Damages”).

4.4.2 If Seller delivers less Energy than the Minimum Performance Requirement in any Performance Measurement Period, then within thirty (30) days after the last day of the last month of such Performance Measurement Period,

Buyer shall notify Seller of any shortfall during the immediately preceding Performance Measurement Period. Buyer shall also provide with such notice a calculation of the damages owed by Seller to Buyer for such shortfall. Within thirty (30) days after Buyer provides such notice and calculation, Seller shall pay to Buyer the full amount of damages due for such shortfall pursuant to Section 4.4.1.

4.5 Seller's Risk of Loss. Seller shall retain title to the Products and bear all risk of loss until delivery of the Products to the Point of Delivery. Buyer shall not be required to pay for any Product that is not actually delivered to the Point of Delivery or which is not metered.

4.6 Buyer's Risk of Loss. Buyer shall take title to the Products, and Seller shall be deemed to have conveyed all of its right, title and interest therein to Buyer, when the Products are delivered at the Point of Delivery. Buyer shall bear all risk of loss of the Products from and after delivery at the Point of Delivery.

5 BILLING AND PAYMENT

5.1 Billing. Seller shall prepare a statement for each Billing Period within ten (10) days after receipt of the billable meter data from Buyer. The statement shall contain or be accompanied by back-up data in electronic form that can be verified by on-site meter data. Seller's invoice will show all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller.

5.2 Payment. Buyer shall pay Seller by wire transfer or electronic funds transfer the sum due within twenty (20) days after receipt of a statement from Seller. If the amount due is not paid on or before the due date, a late payment charge for each day such amount due is not paid shall be applied to the unpaid balance until receipt of such amount due and such amount shall be added to the next invoice. Such late payment charge shall be calculated based on an annual interest rate equal to the Default Interest Rate. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day. Buyer shall have the right to offset against any amounts that may be due and owed to Seller under this Agreement against any damages and other payments that are owed by Seller to Buyer pursuant to this Agreement.

5.3 Billing Adjustment. In the event MISO issues revised meter data regarding a Billing Period for which payment has been made, an adjustment reflecting such revised data shall be made on the next statement.

5.4 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 20.1. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed at the Default Interest Rate. Undisputed portions of amounts invoiced under this Agreement shall be paid on or before the due date or shall be subject to the late payment interest charges at the Default Interest Rate.

6 TAXES AND FEES

6.1 Seller to Pay. Seller shall pay or cause to be paid all taxes, fees or governmental charges imposed by any Governmental Authority (“Taxes”) on or with respect to the Products arising from the production or ownership thereof prior to the Point of Delivery.

6.2 Buyer to Pay. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products arising from the purchase, use or ownership thereof at and from the Point of Delivery (other than ad valorem, franchise, or income taxes that are related to the sale of the Products and are, therefore, the responsibility of Seller).

6.3 Cooperation. Seller and Buyer shall use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize Taxes, so long as neither Party is materially adversely affected by such efforts.

6.4 Remedies. In the event Seller is required to remit or pay Taxes that are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required to remit or pay Taxes that are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Taxes from any amounts due to Seller hereunder. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under applicable Legal Requirements; provided, that an exempt Party shall bear the responsibility of demonstrating, upon request, its exemption as necessary to avoid the imposition of Taxes on the other Party.

7 DELIVERY AND ACCEPTANCE OF PRODUCT

7.1 Product Delivery Obligations. The obligation of Seller to make available to Buyer the Products is on an as-generated, instantaneous basis and is contingent on the availability of the equipment comprising the Facility. The Parties agree and acknowledge that (a) the production of Energy is intermittent and (b) except as expressly set forth in Section 4.4, Seller is not providing a warranty or guarantee of the volume of Products to be produced by the Facility for any hourly, daily, monthly, annual or other period. Seller is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Buyer’s energy requirements but shall supply all of the Products produced by the Facility to Buyer during the Term.

7.2 Reduction in Delivery of Products. For the avoidance of doubt, (a) Seller shall be permitted to reduce deliveries of Products during any Planned Outage or Buyer Event of Default, and (b) each Party shall be permitted to reduce deliveries of Products during any Forced Outage or Force Majeure Event. Other than as expressly permitted in this Section 7.2 or otherwise in this Agreement, no Party shall cause, or allow any third party to cause, the Facility or Seller’s Interconnection Facilities to be shut-down or otherwise disrupted such that deliveries of Energy are reduced.

8 OPERATION AND MAINTENANCE OF FACILITIES

8.1 Operation of the Facility. Seller shall operate and maintain the Facility in accordance with all applicable Legal Requirements. Seller shall bear all costs related to ownership, operation, and maintenance of the Facility.

8.2 Access to Facility. Representatives of Buyer shall have access to the Facility, during normal business hours, and with reasonable prior notice, to exercise its rights under Section 9.2 hereof, to read meters and to perform inspections, maintenance, service, and operational reviews as may be reasonably appropriate to facilitate the performance of this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required and communicated to such representatives by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

8.3 Planned Outages. Seller will provide to Buyer a Planned Outage and maintenance schedule for the next twelve (12) months, which schedule shall be updated monthly. Seller shall provide Buyer with a minimum of ninety (90) day advance written notice of any change in the Planned Outage schedule or a change in the start date or the end date of any Planned Outage; provided, however, that Seller may conduct a Planned Outage without ninety (90) days' advance written notice under the following conditions: (i) a Planned Outage is required and consistent with generally accepted standards of good professional practices in effect at the time, and (ii) Seller provides a minimum of forty-eight (48) hours' advance notice to Buyer. Any other changes to the maintenance schedule may be requested by either Party and each Party shall make commercially reasonable efforts to accommodate such changes.

8.4 Forced Outages. Seller shall promptly provide Buyer with notice of any Forced Outage, reporting the amount of the capacity of the Facility that will not be available because of such Forced Outage and the expected return date and time of such capacity. Seller shall update such report as necessary to advise Buyer of changed circumstances. As soon as practicable, all such oral reports shall be confirmed in writing. Seller shall return the Facility to service as soon as reasonably possible, consistent with generally accepted standards of good professional practices in effect at the time, after the circumstances that caused the Forced Outage cease to exist.

9 METERING

9.1 A Metering Device dedicated only to Energy purchased by Buyer shall measure the delivery of Energy at the Point of Delivery ("Seller's Metering Device"). Seller agrees that during the Term hereof, Energy delivered hereunder to the Point of Delivery shall not be commingled with any other energy produced and generated from electrical generation facilities other than the Facility. Seller shall be responsible for planning, constructing, and paying for the procurement, construction, installation, operation, calibration and maintenance of the Seller's Metering Device and local communications infrastructure located at or near the Point of Delivery.

9.2 Buyer may, at its own expense, install and maintain an additional Metering Device (whether or not redundant) at the Point of Delivery. Upon Buyer's reasonable request, Seller will arrange for a location at the Point of Delivery for such additional Buyer equipment.

9.3 Seller shall test, at its expense, Seller's Metering Device once each calendar year ("Seller's Annual Test"). Seller shall notify Buyer and coordinate such testing to allow for witnessing by Buyer, and the testing company will provide written reports of all testing results to Buyer.

9.4 Buyer shall have the right to inspect and test (at its own expense) any of the Metering Devices at the Facility at reasonable times and upon reasonable (but in any event, no less than 14 days') notice from Buyer to Seller. Seller shall have the right to have a representative present during any testing or calibration of Seller's Metering Device by Buyer. Buyer shall provide Seller with timely notice of any such testing or calibration.

9.5 If Seller's Metering Device is determined to be registering inaccurately by more than two percent (2%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and if any adjustment is required, it shall be reflected in the next invoice provided by Seller to Buyer hereunder, and (ii) if such inaccuracy was discovered during a test performed by Buyer pursuant to Section 9.4, Seller shall reimburse Buyer for the cost of such test.

10 PERFORMANCE SECURITY

10.1 Seller's Performance Security. Seller shall establish, fund, and maintain Performance Security, pursuant to the provisions of this Article 10, which shall be available to pay any amount due Buyer pursuant to this Agreement. Seller shall (a) within thirty (30) days after the later of (i) the Effective Date and (ii) receipt by Buyer of all approvals necessary to authorize the transactions contemplated in this Agreement, establish the Performance Security at a level of twenty thousand dollars per MW (\$20,000/MW) of the Expected Facility Capacity (as may be adjusted pursuant to this Article 10, the "Pre-COD Performance Security") and (b) on the Commercial Operation Date, increase the Performance Security to thirty-five thousand dollars per MW (\$35,000/MW) of the Installed Capacity, as may be adjusted pursuant to Section 3.10 (as may be adjusted pursuant to this Article 10, the "Post-COD Performance Security").

10.2 No Replenishment; Return of Excess. Seller is not required to replenish any amount paid to Buyer from the Pre-COD Performance Security or Post-COD Performance Security. If cash is part of the Performance Security and such cash (including any interest thereon), together with other Performance Security exceeds the required level of the Performance Security, Buyer shall immediately return the excess amount to Seller.

10.3 Draw Conditions.

10.3.1 In addition to any other remedy available to Buyer, Buyer may, before or after termination of this Agreement, draw from or make a demand under the Performance Security, as appropriate, for such amounts as are necessary to recover amounts owed to Buyer pursuant to this Agreement, including any damages due to Buyer and any amounts for which Buyer is entitled to indemnification under this Agreement. Buyer may, in its sole discretion, draw all or any part of such amounts due to it from any form of Performance Security, except from a guaranty, in which case Buyer must make demand for payment in accordance with the terms of such guaranty to the extent available pursuant to this Article 10, and in any sequence Buyer may select. Any failure to draw upon the Performance Security for any damages or other amounts due to Buyer shall not, unless specifically provided otherwise in

this Agreement, prejudice Buyer's rights to recover such damages or amounts in any other manner.

10.3.2 At all times prior to release of the Performance Security pursuant to Section 10.5, Seller shall cause the renewal or extension of the Performance Security no later than thirty (30) days prior to each expiration date of the Performance Security, if any. If the Performance Security is not renewed or extended as required herein, or if the issuer, guarantor or depository bank, as applicable, of such Performance Security ceases to meet the credit rating requirements hereof and the Performance Security is not replaced within thirty (30) days of such credit rating downgrade by a replacement form or forms of Performance Security, Buyer shall have the right to draw immediately upon the Performance Security and to place the amounts so drawn, at Seller's cost, in an escrow account, until such time as Seller provides a substitute form of such security meeting the requirements of this Article 10.

10.4 Forms of Security. The Performance Security shall be maintained at Seller's expense and shall be in the form of one or more of the following instruments. Seller may change the form of the Performance Security at any time and from time to time upon reasonable prior notice to Buyer, but the Performance Security shall at all times be comprised of one or any combination of the following:

- (a) an irrevocable, stand-by letter of credit issued substantially in form and substance satisfactory to Buyer in its reasonable discretion from a Creditworthy Institution;
- (b) United States currency, deposited with a Creditworthy Institution, either:
 - (i) in an account under which Buyer is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or
 - (ii) held by a Creditworthy Institution as escrow agent with instructions to pay claims made by Buyer pursuant to this Agreement, such instructions to be in a form reasonably satisfactory to Buyer. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date is achieved, annual account sweeps for recovery of interest earned by the Performance Security shall be allowed by Seller. At such times as the balance in the escrow account exceeds the amount of Seller's obligation to provide security hereunder, Buyer shall remit, or permit to be remitted, to Seller on demand (but no more than once each calendar year) any excess in the escrow account above Seller's obligations; and/or

- (c) a payment guarantee, substantially in form and substance satisfactory to Buyer in its reasonable discretion meeting the Required Creditworthiness (“Seller Guarantor”).

10.5 Release of Performance Security. Promptly following the end of the Term (including by the early termination hereof) and the completion of all of Seller’s obligations under this Agreement as of such time (including the payment of a Termination Payment, if applicable), Buyer shall release the Performance Security (including any accumulated interest, if applicable) to Seller.

11 COMPLIANCE WITH LEGAL REQUIREMENTS

11.1 Governmental Jurisdiction and Regulatory Compliance. Each Party shall at all times comply with all Legal Requirements applicable to it. As applicable, each Party shall give all required notices, shall procure and maintain all necessary Governmental Approvals and inspections necessary for performance of its respective obligations under this Agreement, and shall pay its respective charges and fees in connection therewith.

11.2 Approvals, Licenses, and Permits for the Facility. Seller shall obtain at its own expense all Governmental Approvals for construction, testing and operation of the Facility. Notwithstanding the foregoing, at Seller’s reasonable request, Buyer agrees to provide Seller with reasonable assistance in obtaining and maintaining all such Governmental Approvals.

11.3 Provision of Support. Each Party shall use commercially reasonable efforts to make available any personnel and records relating to the Facility to the extent that the other Party reasonably requires the same in order to fulfill any regulatory reporting requirements, or to assist the other party in litigation.

11.4 Changes in Legal Requirements. Upon any Change in Legal Requirements, the Parties shall use their best efforts to reach mutual agreement on a commercially reasonable amendment of the Agreement in order to conform with such Change in Legal Requirements; provided, that each Party shall be responsible for its own costs incurred in order to perform its obligations under this Agreement in accordance with such Change in Legal Requirements; provided, further, that if (a) the Parties cannot reach mutual agreement to amend the Agreement following any Change in Legal Requirements and (b) Seller’s additional costs incurred in order to perform its obligations hereunder in accordance with such Change in Legal Requirements exceed (i) two hundred thousand dollars (\$200,000) in any calendar year or (ii) one million dollars (\$1,000,000) in the aggregate over the Term, then, upon thirty (30) days’ notice to Buyer, Seller may terminate this Agreement without penalty and without triggering the default provisions in this Agreement or incurring any liability under this Agreement whatsoever, in which event the Parties shall have no further obligations to the other hereunder, except for those obligations which specifically survive the termination of this Agreement, and Buyer shall promptly release the Performance Security (including any accumulated interest, if applicable) to Seller.

12 LIMITATION OF LIABILITY

12.1 Limitation on Liability.

12.1.1 IN NO EVENT SHALL SELLER OR BUYER, OR THEIR RESPECTIVE SUBCONTRACTORS, VENDORS OF ANY TIER, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE ARISING AT ANY TIME FOR ANY REASON ARISING OUT OF THIS AGREEMENT OR THE BREACH THEREOF. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL LIMIT AMOUNTS RECOVERABLE AS THIRD-PARTY INDEMNITY OBLIGATIONS UNDER ARTICLE 23.

12.1.2 TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED (INCLUDING PURSUANT TO SECTIONS 3.10, 4.4, AND 21.7), THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OR OTHERWISE OBTAINING AN ADEQUATE REMEDY WOULD BE INCONVENIENT, AND THE DAMAGES PROVIDED FOR BY THIS AGREEMENT ARE NOT PENALTIES AND CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS ANTICIPATED TO BE SUFFERED AND SUCH PAYMENTS SHALL BE PAID IN ACCORDANCE WITH THE CIRCUMSTANCES CONTEMPLATED BY THIS AGREEMENT REGARDLESS OF THE AMOUNT OF LOSSES AND DAMAGES ACTUALLY SUSTAINED.

12.1.3 No Affiliate of either Party shall have any liability or responsibility for, relating to or in connection with such Party's failure to perform or faulty performance of any term, covenant, condition or provision of this Agreement or any other failure, breach (including breach of any duty or standard of conduct) or other act or omission of such party arising out of or in connection with this Agreement, including as a result of the fault, negligence (including gross negligence) (in whole or in part), strict liability or breach of contract of the Affiliate. In pursuing any remedy for any such failure to perform, faulty performance or other failure, breach or other act or omission of a Party, the other Party and its Affiliate shall not have recourse against any Person other than the defaulting or breaching Party itself, nor against any assets other than the assets of the defaulting or breaching Party itself. Notwithstanding the foregoing, nothing in this Section 12.1 shall limit or affect the obligations of the provider of the Performance Security (including Seller Guarantor) under the terms of such Performance Security.

12.1.4 [Intentionally Removed by Parties]

12.1.5 Except as provided for herein, Seller's aggregate liability to Buyer under this Agreement arising prior to the Commercial Operation Date shall not exceed an amount equal to one hundred percent (100%) of the Pre-COD Performance Security. This limit on liability does not apply to, and is independent to, Seller's insurance requirements and indemnification obligations in Section 23 of this Agreement.

12.1.6 Notwithstanding anything contained herein to the contrary, in no event shall the limitations of liability provided for in this Article 12 apply for instances of fraud, gross negligence or willful misconduct.

12.2 No Implied Warranties. UNLESS EXPRESSLY SET FORTH IN THIS Agreement, THERE ARE NO WARRANTIES, WHETHER IMPLIED, STATUTORY, AT LAW OR IN EQUITY, WHETHER ORAL OR WRITTEN, AND WHETHER ARISING FROM CUSTOM OR TRADE OTHERWISE INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13 ENVIRONMENTAL BENEFITS; CAPACITY ATTRIBUTES

13.1 Ownership. Buyer shall have all right title and interest in and to the RECs and Capacity Attributes associated with the Facility. Seller acknowledges that any RECs and Capacity Attributes belong to Buyer. If any RECs or Capacity Attributes are initially credited to Seller, Seller shall cause such RECs to promptly be assigned or transferred to Buyer.

13.2 Future Environmental Benefits. The Parties acknowledge and agree that as of the Effective Date, Environmental Benefits sold under this Agreement are restricted to the RECs and that Environmental Benefits may be developed and recognized by a Governmental Authority after the Effective Date ("Future Environmental Benefits"). In such event, at Buyer's election, Seller shall deliver notice to Buyer stating any costs that would have to be incurred to qualify for such Future Environmental Benefits. To the extent that Buyer elects to pursue such Future Environmental Benefits, any additional costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Benefits shall be borne by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to purchase the Future Environmental Benefits; provided, that if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election not to purchase such Future Environmental Benefits, and Seller shall not incur any new additional costs. Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice of election not to purchase such Future Environmental Benefits. The Parties agree to cooperate in good faith with respect to the development of further agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Benefits prior to any such sale or purchase, including agreement with respect to appropriate sale, purchase, delivery and risk of loss mechanisms; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

13.3 Delivery of Capacity Attributes. At Buyer's request, the Parties shall execute such documents and instruments, and Seller shall cooperate with Buyer with respect to any testing or measurements, that may be reasonably required to effect recognition and transfer of Capacity Attributes, if any, to Buyer. Buyer shall bear the costs associated with preparing and executing any such documents and instruments.

14 ACCOMMODATION OF LENDERS

14.1 Rights of Lenders. Notwithstanding anything in this Agreement to the contrary, the following provisions shall apply with respect to each of Seller's Lenders:

- 14.1.1 Any such Lender shall be permitted to foreclose on its interest in this Agreement, Seller or its Affiliates (including any such foreclosure that results in a change in control) without the consent of Buyer.
- 14.1.2 Such Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement, to prevent or cure a default by Seller in accordance with Section 21.1, and such act performed by such Lender shall be as effective to prevent or cure a default as if done by Seller.
- 14.1.3 Buyer shall be required to send such Lender a copy of any and all notices delivered to Seller if Seller has given Buyer notice of such Lender.
- 14.1.4 Upon Seller's reasonable request, Buyer shall promptly (i) execute a consent to assignment with a Lender in a commercially reasonable form acceptable to Buyer and Seller, and (ii) provide estoppels associated to a Lender in a commercially reasonable form acceptable to Buyer and Seller.
- 14.1.5 Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; provided, that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.
- 14.1.6 Buyer will not exercise any right to terminate or suspend this Agreement, unless it shall have given such Lender prior written notice of its intent to terminate or suspend this Agreement. Buyer shall accept a cure performed by such Lender so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Lender. Notwithstanding any such action by a Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

14.2 Lender as a Third-Party Beneficiary. Buyer agrees and acknowledges that each Lender is a third-party beneficiary of the provisions of this Article 14.

15 ASSIGNMENT

15.1 General.

15.1.1 Except as provided in this Article 15, neither Seller nor Buyer may pledge, assign, or transfer all or any part of, or any right or obligation under this Agreement, whether voluntary or by operation of law, without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out in this Agreement shall be null and void.

15.1.2 Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Article 15. Any purported sale or transfer in violation of this Section 15.1.2 shall be null and void. For the avoidance of doubt, Buyer acknowledges and agrees that Seller or its Affiliates may finance, or refinance from time to time, the design, development, construction, installation, operation, maintenance, and ownership of the Facility by, among other collateral, an assignment of this Agreement and a first priority security interest in the Facility.

15.2 Permitted Assignments.

15.2.1 Notwithstanding anything to the contrary in Section 15.1, Seller may, without the consent of Buyer, mortgage, pledge, grant security interests in, assign or otherwise transfer or encumber this Agreement to: (i) an Affiliate of Seller; (ii) any Person succeeding to all or substantially all of Seller's assets (whether voluntarily or by operation of law); or (iii) a Lender; provided, that Seller shall (A) deliver a written notice to Buyer within ten (10) Business Days of such assignment or other transfer becoming effective, which notice shall include the names of and notification information for any and all transferees, and (B) (1) certify that Performance Security caused to be delivered by Seller hereunder shall remain in place following such assignment or (2) cause Seller's proposed assignee to have substantially equivalent Performance Security issued to Seller.

15.2.2 Buyer may, without Seller's consent, assign or transfer this Agreement to: (i) an Affiliate of Buyer or (ii) any Person succeeding to all or substantially all of Buyer's assets (whether voluntary or by operation of law), provided that no fewer than twenty (20) Business Days before such assignment Buyer (A) notifies Seller of any such assignment and (B) receives written notice from Seller confirming that Buyer's proposed assignee meets the Required Creditworthiness, provided that the assignee shall be deemed acceptable if Seller has not delivered written objection to Buyer within fifteen (15) Business Days from date of notice of assignment.

16 FORCE MAJEURE

16.1 Force Majeure Events. Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- (i) the non-performing Party gives the other Party prompt written notice (but in any event no longer than ten (10) days after becoming aware of the Force Majeure Event) describing the particulars of the occurrence of the Force Majeure Event;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure Event; and
- (iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect.

Except as otherwise expressly provided for in this Agreement, the existence of a Force Majeure Event shall not relieve the Parties of their obligations under this Agreement (including payment obligations) to the extent that performance of such obligations is not precluded by the Force Majeure Event. During the period of any Force Majeure Event, Buyer shall not be obligated to purchase or pay for any Products that cannot be delivered to or received by Buyer due to the Force Majeure Event.

16.2 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by Force Majeure Events continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, either Party may, at any time following the end of the three hundred sixty-five (365)-day period, terminate this Agreement upon written notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

17 INSURANCE

Seller shall maintain insurance coverage as set forth in Exhibit E throughout the Term. If any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market, Seller shall provide written notice to Buyer and Seller shall use every commercially reasonable effort to obtain other insurance that would provide comparable coverages and protection against the risk to be insured. In the event Seller is in receipt of insurance proceeds resulting from any claim that impacted the efficient performance of the Facility, Seller shall take commercially reasonable steps to restore the condition of the Facility with such proceeds.

18 CONFIDENTIALITY

Buyer is subject to the provisions of the Missouri Revised Statutes Chapter 610, Governmental Bodies and Records (the “Missouri Sunshine Law”). The Parties agree that the Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, as amended. If Seller provided any information or documents to Buyer that Seller reasonably believes are closed records under the Missouri Sunshine Law, then Seller shall designate such records to be “confidential” or “proprietary” by conspicuously marking the records as such. If the Buyer receives an open records request for any such records marked by Seller as “confidential” or “proprietary”, then Buyer shall notify Seller of such request in sufficient time to allow Seller an opportunity to protect such records from public disclosure. Both Parties agree and understand that the terms of this Agreement and pricing thereof are open records under the Missouri Sunshine Law.

19 NOTICE

19.1 Notices. Except as may be otherwise expressly provided for herein, all notices, consents and other communications required or permitted by this Agreement, other than those relating to routine scheduling and operational matters, shall be in writing and shall be delivered by hand or express courier service, certified U.S. mail, facsimile or electronic mail (so long as a copy of such facsimile or electronic mail notice is provided thereafter by hand delivery, express courier or certified U.S. mail) in accordance with Exhibit D.

19.2 Receipt of Notice. All notices and other communications given to any Party hereto shall be deemed to have been duly given (i) on the date of receipt if delivered by hand or express courier service (ii) on the date of receipt of a time-stamped, legible copy thereof if sent by facsimile (iii) on the date of the time stamp if sent by electronic mail, or (iv) on the date seven (7) days after dispatch if sent by certified mail if mailed, in each case delivered, sent or mailed (properly addressed) to such Party; provided, that deliveries under (ii) or (iii) shall be deemed to have been made upon the next Business Day if made after the close of business on any Business Day or on any other day.

19.3 Address Changes. A Party may change its addresses and payment instructions set forth on Exhibit D from time to time by providing notice of such change to the other Party.

20 DISPUTE RESOLUTION

20.1 Consultation. In the event of any dispute arising under this Agreement (a “Dispute”), within ten (10) days following the receipt of a written request by either Party (a “Dispute Notice”), (i) each Party shall appoint a representative from its senior officers or managers (individually, a “Party Representative”, together, the “Parties’ Representatives”), and (ii) the Parties’ Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. If the matter is not resolved within fifteen (15) Business Days after such meeting, either Party may seek any and all remedies available to it at law or in equity.

20.2 Performance During Dispute. While any controversy, dispute or claim arising out of or relating to this Agreement is pending, Seller and Buyer shall continue to perform their

obligations hereunder to the extent possible notwithstanding such controversy, dispute or claim, and to the extent such performance is not otherwise excused under this Agreement.

21 DEFAULT; TERMINATION

21.1 Seller Events of Default. Each of the following shall be a default by Seller (each such event being called a "Seller Event of Default"):

- (a) Seller is subject to a Bankruptcy Proceeding;
- (b) The sale by Seller to a third party, or diversion by Seller for any use, of Products committed to Buyer by Seller;
- (c) Seller's failure to make, when due, any undisputed payment required under this Agreement if such failure is not remedied within ten (10) days following Seller's receipt of written notice of such failure from Buyer;
- (d) Seller's failure to establish or maintain the Performance Security in accordance with Article 10, which failure continues for fifteen (15) days after Seller's receipt of written notice of such failure from Buyer;
- (e) Seller's failure to maintain in effect the Interconnection Agreement or any Governmental Approvals required to deliver the Products to the Point of Delivery, which failure continues for ninety (90) days after Seller's receipt of written notice of such failure from Buyer;
- (f) Except as otherwise expressly provided in this Section 21.1, Seller's failure to comply with any other material obligation under this Agreement, which would result in a material adverse impact on Buyer and such failure continues for thirty (30) days after Seller's receipt of written notice from Buyer of its occurrence (provided, that if such default is not reasonably capable of being cured within the thirty (30)-day cure period but is reasonably capable of being cured, Seller shall have an additional ninety (90)-day cure period to cure such default, so long as Seller promptly commences and diligently pursues such cure);
- (g) The Facility delivers Energy to the Delivery Point at an amount less than the Default Performance Requirement during a Performance Measurement Period;
- (h) Seller's assignment of this Agreement, except as permitted in accordance with Article 15;
- (i) Any representation or warranty made by Seller in this Agreement shall prove to have been false or misleading in any material respect when made if such false or misleading statement would reasonably be expected to result in a material adverse impact on Buyer and such event continues for thirty (30) days after Seller's receipt of written notice from Buyer of its

occurrence (provided, that if such default is not reasonably capable of being cured within the thirty (30)-day cure period but is reasonably capable of being cured, Seller shall have an additional ninety (90)-day cure period to cure such default, so long as Seller promptly commences and diligently pursues such cure); or

- (j) Seller's failure to maintain insurance in accordance with Article 17 and such failure continues for thirty (30) days.

21.2 Buyer Events of Default. Each of the following shall be a default by Buyer (each such event being called a "Buyer Event of Default"):

- (a) Buyer is subject to a Bankruptcy Proceeding;
- (b) Buyer's failure to make, when due, any undisputed payment required under this Agreement if such failure is not remedied within ten (10) days after Buyer's receipt of written notice of such failure from Seller;
- (c) Except as otherwise expressly provided in this Section 21.2, Buyer's failure to comply with any other material obligation under this Agreement which would result in a material adverse impact on Seller and such failure continues for thirty (30) days after Buyer's receipt of written notice from Seller of its occurrence (provided, that if such default is not reasonably capable of being cured within the thirty (30)-day cure period but is reasonably capable of being cured, Buyer shall have an additional ninety (90)-day cure period to cure such default, so long as Buyer promptly commences and diligently pursues such cure);
- (d) Buyer's assignment of this Agreement, except as permitted in accordance with Article 15; or
- (e) Any representation or warranty made by Buyer in this Agreement shall prove to have been false or misleading in any material respect when made if such false or misleading statement would reasonably be expected to result in a material adverse impact on Seller and such event continues for thirty (30) days after Buyer's receipt of written notice from Seller of its occurrence (provided, that if such default is not reasonably capable of being cured within the thirty (30)-day cure period but is reasonably capable of being cured, Buyer shall have an additional ninety (90)-day cure period to cure such default, so long as Buyer promptly commences and diligently pursues such cure).

21.3 Damages Prior to Termination. Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right (subject to Sections 3.10 and 4.4 and Article 12 and other limitation of liability or liquidated damages provisions of this Agreement), to collect damages accruing prior to termination of this Agreement from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute a part of the cure.

21.4 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

21.5 Waiver of Default. If an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) days, and the non-defaulting Party has not elected to terminate this Agreement, the non-defaulting Party shall have waived its right to terminate this Agreement for such Event of Default.

21.6 Termination. Upon the occurrence and during the continuance of an Event of Default which has not been cured within the applicable cure period, if any, the non-defaulting Party shall have the right to declare a date (the "Early Termination Date"), which shall be between fifteen (15) and thirty (30) days after the notice thereof, upon which this Agreement shall terminate. Neither Party shall have the right to terminate this Agreement except as described herein or as otherwise may be expressly provided for in this Agreement.

21.7 Termination Payment. The non-defaulting Party shall calculate (and provide detailed calculations to the defaulting Party), in a commercially reasonable manner, the Settlement Amount as of the Early Termination Date. The non-defaulting Party shall aggregate all payments due and amounts owing under this Agreement into a single amount by netting out (a) all payments and other amounts that are due to the defaulting Party under this Agreement, against (b) the Settlement Amount that is due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted out into a single liquidated amount (the "Termination Payment"). The defaulting Party shall be liable to the non-defaulting Party to the extent the Termination Payment exceeds zero dollars (\$0). In no event shall the non-defaulting Party be obligated to make a Termination Payment to the defaulting Party.

21.7.1 As soon as practicable after the Early Termination Date, the non-defaulting Party shall give notice to the defaulting Party of the amount of the Termination Payment due from the defaulting Party, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If a Termination Payment is owed by the defaulting Party, such Termination Payment shall be made by the defaulting Party within ten (10) Business Days after receipt of such notice.

21.7.2 If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within ten (10) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, deliver a Dispute Notice and commence the dispute resolution procedure provided in Section 20.1.

21.8 Suspension of Performance. If an Event of Default has occurred and is continuing, the non-defaulting Party shall have the right to suspend performance of its obligations under this Agreement.

21.9 Remedies Cumulative. Subject to Sections 3.10, 4.4 and 24.12 and Article 12 and limitation of liability or liquidated damages provisions of this Agreement, each right or remedy

of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

22 REPRESENTATIONS AND WARRANTIES

22.1 Seller's Representations and Warranties. As of the Effective Date Seller hereby represents and warrants as follows:

22.1.1 Seller is a limited liability company duly organized, validly existing and in good standing under the Legal Requirements of the jurisdiction of its formation. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

22.1.2 The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary company action, and do not and will not:

- (a) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;
- (b) violate any provision of any Legal Requirement currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
- (c) result in a breach or constitute a default under Seller's organizational documents or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
- (d) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

22.1.3 There is no Bankruptcy Proceeding pending or being contemplated by Seller, or to its knowledge threatened against it.

22.1.4 This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization and other Legal Requirements affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with principles of equity.

22.1.5 Seller has never defaulted on any agreement for the sale of energy.

22.2 Buyer's Representations and Warranties. As of the Effective Date Buyer hereby represents and warrants as follows:

22.2.1 Buyer is a Missouri municipal corporation duly organized, validly existing and in good standing under the Legal Requirements of the jurisdiction of its formation. Buyer is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer; and Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

22.2.2 The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary company action, and do not and will not:

- (a) require any consent or approval by any governing body of Buyer, other than that which has been obtained and is in full force and effect;
- (b) violate any provision of Legal Requirements currently in effect having applicability to Buyer or violate any provision in any organizational documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;
- (c) result in a breach or constitute a default under Buyer's organizational documents, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or
- (d) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned

or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

22.2.3 There is no Bankruptcy Proceeding pending or being contemplated by Buyer, or to its knowledge threatened against it.

22.2.4 This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization and other Legal Requirements affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with principles of equity.

23 INDEMNITY

23.1 Indemnification. To the extent not prohibited by law, each Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other Party and its Related Persons (the "Indemnified Party") from and against all claims, damages, losses, and expenses (including but not limited to reasonable attorney's fees) for personal injury or death to Persons and damage to the property of any Indemnified Party or third party to the extent arising by reason of any act or failure to act, negligent or otherwise of the Indemnifying Party or its Related Persons in connection with this Agreement; provided, however, that the Indemnifying Party shall not be required to indemnify, hold harmless, or defend the Indemnified Party from its sole negligence, intentional acts, or willful misconduct.

23.2 Claims. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 23 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs; provided, further, that without the Indemnified Party's prior written consent, which consent may not be unreasonably withheld, the Indemnifying Party may not agree to any settlement or compromise of any claim that is not an unconditional release of the Indemnified Party from any and all liabilities other than the payment of money that will be paid by the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

23.3 Insurance Proceeds. Except as otherwise provided in this Article 23, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns

harmless under this Article 23, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds, plus any increase in the Indemnified Party's insurance premiums.

24 MISCELLANEOUS

24.1 Governing Law. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable.

24.2 Venue. The venue for all action arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

24.3 Binding Effect. This Agreement, as it may be amended from time to time pursuant to this Article 24, shall be binding upon and inure to the benefit of the Parties and their respective successors in interest, legal representatives, and assigns permitted hereunder.

24.4 Entire and Complete Agreement. This Agreement, including any referenced exhibits and appendices, constitutes the complete agreement between Seller and Buyer relating to the Facility, superseding all prior agreements, understandings, representations or undertakings, whether written or oral. Any exceptions or additional terms are hereby rejected unless specifically agreed to in writing by Seller and Buyer. No course of prior dealing or performance between Seller and Buyer or usage of trade shall be relevant to supplement, explain, interpret or modify any term, condition or instruction used in this Agreement.

24.5 Independent Contractor. Nothing in this Agreement shall be deemed to make either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the Parties. Seller is, and shall remain, an independent contractor in the construction and operation of the Facility, maintaining complete control of its personnel, workers, subcontractors and operations required for construction and operation of the Facility.

24.6 Third Party Beneficiaries. This Agreement shall be for the sole benefit of Seller and Buyer and for such other parties only as expressly provided in this Agreement and then subject to the terms of this Agreement. In executing this Agreement, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

24.7 Amendments. This Agreement may be amended, modified, changed or altered only by a written agreement between the Parties, except that Exhibit A may be modified by Seller to the extent permitted by Section 2.2.

24.8 No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation of either Party's applicable sovereign,

governmental, or official immunities and protections to the extent provided by federal and state constitution or laws. To the extent permitted by law, Buyer and Seller each warrant and represent that neither Party has any sovereign, governmental or official immunity it can claim or assert as a defense with respect to any claim or damages arising out of an Event of Default or other breach of this Agreement.

24.9 Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment to the provisions of this Agreement with a view toward effecting the purposes of this Agreement by the provision that is invalid or unenforceable with a valid provision, the economic effect of which comes as close as possible to that of the provision that has been found to be invalid or unenforceable.

24.10 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this Agreement.

24.11 Consideration. Seller and Buyer agree that the mutuality of the agreements, promises and covenants set forth in this Agreement are sufficient consideration for such agreements, promises and covenants, and Seller and Buyer hereby acknowledge the sufficiency and adequacy of the same.

24.12 Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including accrued payment obligations, warranties, remedies and indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation. The indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

24.13 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereby are a "forward contract" within the meaning of the United States Bankruptcy Code. Each Party represents that it is a "forward merchant" within the meaning of the United States Bankruptcy Code and an "eligible contract participant" within the meaning of the United States Commodities Exchange Act. The Parties further acknowledge and agree that (a) pursuant to Section 362(b)(6) of the United States Bankruptcy Code and (b) pursuant to Section 546(e) of the United States Bankruptcy Code, transfers made in connection with this Agreement are not subject to avoidance.

24.14 Unauthorized Aliens Prohibited. Seller shall comply with Missouri Revised Statute Section 285.530 in that Seller shall not knowingly employ, hire for employment, or

continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Seller shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Seller shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Seller shall require all subcontractors to observe the requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractor performing any of the contracted services.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be executed by their duly authorized representatives as of the date of the last signatory below.

BUYER:

CITY OF COLUMBIA, MISSOURI


By: _____
John Glascock, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor / ak 

CERTIFICATION: I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account No. _____ and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Janet Frazier, City Director of Finance

SELLER:

BOONE STEPHENS SOLAR I, LLC

By:



Name: John "Jay" Schoenberger

Title: Vice President

Date:

10/22/2019

EXHIBIT A

FACILITY DESCRIPTION

A 64 MWac utility-scale photovoltaic generating facility located in Boone County, Missouri.

The Point of Delivery is the 69 kV bus at the Bolstad Substation.

SITE MAP

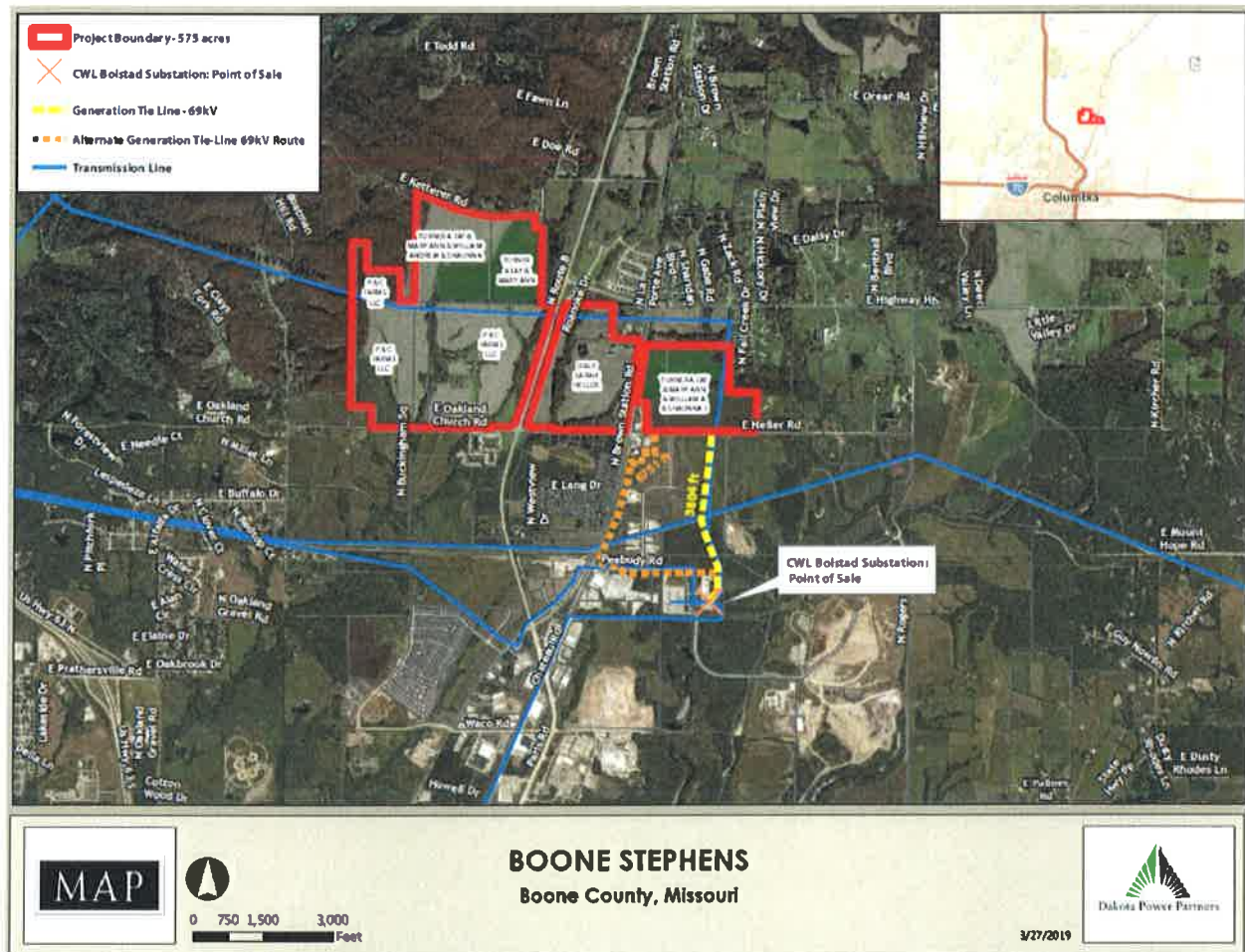


EXHIBIT C

COMMITTED ENERGY

Year	Estimated Annual Production (MWh/yr)
1	142,912
2	142,197
3	141,486
4	140,779
5	140,075
6	139,374
7	138,677
8	137,984
9	137,294
10	136,608
11	135,925
12	135,245
13	134,569
14	133,896
15	133,226
16	132,560
17	131,898
18	131,238
19	130,582
20	129,929

EXHIBIT D

NOTICES

Boone Stephens Solar I, LLC

Name: MAP Energy ("MAP")
Address: 3000 El Camino Real
5 Palo Alto Square, Suite 640
Palo Alto, CA 94306
Phone: 650-324-9095
Email: info@map-energy.com

With copy to:

Name: Dakota Power Partners
Address: 191 University Blvd, Suite 667
Denver, CO 80206
Phone: 901-827-1833
Email: jschoenberger@dakotapp.com

City of Columbia, Missouri

City of Columbia, Missouri
Utilities Department
ATTN: Director of Utilities
P.O. Box 6015
Columbia, MO 65205

With a copy to:

City of Columbia, Missouri
Finance Department
ATTN: Purchasing Agent
P.O. Box 6015
Columbia, MO 65205

EXHIBIT E

SELLER INSURANCE

A. Insurance Coverage. On or prior to the date the Seller commences construction of the Facility, Seller shall maintain the types of insurance coverages described in this Part A. All insurance coverages described herein shall be placed with insurance companies that are legally authorized to do business in the State of Missouri and are rated at least A-/VIII by A.M. Best.

1. Comprehensive or Commercial General Liability Insurance. Seller shall maintain comprehensive or commercial general liability insurance on an "occurrence" basis, including coverage for bodily injury, property damage, personal injury, death, premises/operations, explosion, collapse and underground hazards, broad form property damage and blanket contractual liability for written contracts, with primary coverage limits of not less than \$1,000,000 for injuries or death to one or more persons or damage to property per occurrence and an aggregate limit of not less than \$2,000,000.

2. Automobile Liability Insurance. Seller shall maintain or cause to be maintained automobile liability insurance for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with applicable Legal Requirements, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

3. Umbrella Excess Liability Insurance. Seller shall maintain or cause to be maintained umbrella/excess liability insurance of not less than \$10,000,000. Such coverages shall be on a per occurrence basis or claims made basis.

4. All-Risk Property Insurance. Seller shall maintain or cause to be maintained all-risk property on a replacement cost basis for the Facility with commercially reasonable earthquake, windstorm and flood sub-limits commensurate with solar energy projects of similar size and location

B. General Terms.

1. Additional Insureds. Each insurance policy described in Sections 2, 3 and 4 of Part A of this Exhibit E shall include provisions or endorsements naming Buyer and its successors in interest as an additional insured. Each insurance policy for which an additional insured is required to be named pursuant to this Section 1 of this Part B shall provide a severability of interests or cross liability clause.

2. Subrogation. Each insurance policy maintained (or caused to be maintained) by Seller shall provide a waiver of subrogation against Buyer.

3. Evidence of Coverage. Seller shall deliver to Buyer certificates or other evidence of all insurance policies maintained by Seller within thirty (30) days after the date construction commences on the Facility and each time thereafter when there is any renewal of or change in such insurance policies.

4. Termination of Coverage. Seller (or its insurance carrier) shall provide Buyer prior written notice of any cancellation or non-renewal of any insurance policy required to be maintained by Seller pursuant to this Exhibit E.