**OFFICIAL MINUTES OF THE OXFORD MAYOR AND COUNCIL MEETING**
**WORK SESSION**
**MONDAY, JULY 19, 2021 – 6:30 PM**
**VIA TELECONFERENCE**

**ELECTED OFFICIALS PRESENT:**
David Eady – Mayor
George Holt – Councilmember
Jim Windham – Councilmember
Lynn Bohanan – Councilmember
Laura McCanless – Councilmember
Jeff Wearing – Councilmember

**STAFF PRESENT:**
Marcia Brooks – City Clerk/Treasurer
Jody Reid – Utilities & Maintenance Supervisor

**ELECTED OFFICIALS NOT PRESENT:**
Avis Williams – Councilmember

**OTHERS PRESENT:** Holly Bisig (Municipal Electric Authority of Georgia Power (MEAG)), Steve Jackson (MEAG), Michele Jackson (MEAG), Art Vinson, Laurie Vinson, Michael McQuaide, Phone Number 803-606-9124 (name unknown).

**Agenda** (Attachment A)

1. **Mayor's Announcements**
   - Mayor Eady announced the passing of community member Nancy Murdy.
   - City Manager Matt Pepper is out on leave due to the birth of his child on July 12, 2021. Mr. Pepper has accepted a position as Assistant City Manager with the City of Snellville. His last day with the City of Oxford will be August 11, 2021. The City is aggressively recruiting for a qualified individual to fill the position. Several candidates have already submitted resumes and applications. The deadline is July 30, 2021. Mayor Eady will provide more details in an Executive Session tonight.
   - The City of Oxford is now the owner of about 32 acres of property, about four being in the City of Oxford and twenty-eight being in the City of Covington. The purchases also position the City of Oxford against potential encroachment from industrial development and related impacts from noise. These actions also further the City's action to protect the Dried Indian Creek corridor. James Windham asked if the City plans to ask the City of Covington to cede the twenty-eight acres to the City of Oxford. Mayor Eady stated that he expects that will occur as soon as the City can take the administrative steps necessary to complete that process.

2. **Committee Reports**
   a. Trees, Parks and Recreation (TPR) Board
   Mayor Eady stated that he reached out to the TPR Board and Sustainability Committee concerning the grass in Asbury Street Park. They agreed that the grass is being cut too short. Jody Reid advised that he communicated with the landscape company and ask them to raise the decks on their mowers until the grass is three inches. He also advised that they would start the organic fertilizing program that had been discussed. Laura McCanless also discussed invasives in highly visible areas. This issue is still being discussed. Mayor Eady asked the TPR Board to initiate a systematic plan for removal of invasive species along Oxford streetscapes and trails and replacing them with native species plants.

   b. Sustainability Committee – Michael McQuaide stated the committee is excited to be undertaking the restoration of the Dried Indian Creek corridor through application of the grant from the Georgia Outdoor Stewardship Program. The Committee's work has been focused on efforts that gain merit for that program. Mayor Eady has received word from Congressman Hank Johnson's office that a Congressional earmark project for the Dried Indian Creek Protection and Connectivity Initiative at the level of $900,000 is in the Transportation and Infrastructure Appropriations Bill the committee is working up. It is one of several projects Congressman Johnson has included in the bill. Mayor Eady also advised that he has met with the intern engaged for the summer by the Sustainability Committee. He presented his findings on sustainability plans in other cities to Mayor Eady. Marcia Brooks stated that a survey on Dried Indian Creek will be going out this month with the utility bills.

   c. Downtown Development Authority (DDA) – Mayor Eady stated that the DDA is continuing to work on their plans for the greenspace improvements.

   d. Committee on Race – Mayor Eady stated that Mark Auslander is in town to film segments around the City about contributions from people of color over the years. Emory is considering a monument in tribute to slaves and others who made sacrifices in their contributions to the City.

   e. Planning Commission – The City has engaged with the Northeast Georgia Regional Commission (NEGRC) to develop the text changes for the zoning amendments proposed by the Planning Commission.

3. **Solar Power Purchase Contract** (Attachment B)
   Representatives from MEAG presented an update on the solar power purchase option that was discussed with the City Council in 2020. Steve Jackson stated that the size and developer of the project have changed due to interest from MEAG participants at less than 100 megawatts. The original developer had based their participation on commitments of about 150 megawatts. They consequently raised their prices to the extent that MEAG felt it was no longer a viable proposal for participants.

MEAG terminated discussions with the original vendor and went back to some of the other vendors they had received proposals from. They now have a viable and executable power purchase agreement (PPA) with a developer for an eighty-megawatt agreement. The cost is $25.91 per megawatt hour, which is less than what was expected in the prior agreement. The cost is fixed for a term of twenty years. Another advantage is that the infrastructure connects to a MEAG power substation, which provides MEAG with control over the interconnectivity. Consequently, the structure of the project is more economical.

Before MEAG can commit to the power purchase contract, they need commitments from participants in the form of an executed contract. They do have a subset of the forty-nine participants in Georgia already interested.

Mr. Jackson also noted that the PPA is for 80 megawatts of power, no more and no less. If interest levels are received above the 80 megawatts, participants' request will be scaled back using a formula in the PPA.

Security provisions are the same as in other contracts. There is also a 25% step-up clause. This means if a participant defaults on the agreement, the other participants will be required to pay up to 25% of their monthly payment to make the developer whole. MEAG has never had to institute a step-up provision and they do not expect it to be instituted, but it is a way to provide assurance to the developer that their participation is worthwhile and that they can obtain low-interest financing for the infrastructure because of the security the participants are providing. It also allows MEAG to issue economic bonds. In addition, the power is sold on the open market to generate revenue, and each participant contributes money to an escrow account from which payments would be made.

There is no fixed cost associated with this initiative, no debt being issued, and no demand or capacity payment to the developer. Participants only pay for energy used. The price is very economical, and not quite as efficient as nuclear power operationally, but is more economical than natural gas or coal.

MEAG is requesting that participants who sign up execute a resolution. They have provided a template for this purpose. They have also provided an opinion of counsel to show to the developer that the participant's counsel has reviewed all legal requirements and approves participation in the agreement from a legal perspective. MEAG would like to have these two documents along with the power purchase contract executed and returned to them by mid-August. MEAG will then take the PPA to their board for approval.

Laura McCanless noted that the new provider, Pineview Solar, has an incorporation date of a few days ago. She asked if MEAG had researched other projects they had been involved in, and if they feel confident that Pineview Solar has the ability to undertake this project. Steve Jackson stated that each project is a limited liability company. The developer is hep Peak Clean Energy, a large German organization. The company hep

purchased Peak Clean Energy in 2019, which has been working on renewable energy projects for a number of years. MEAG Power feels very confident in the ability of the developer to follow through.

James Windham stated that he has more confidence in the project knowing that a German company is behind it because they have more experience in such projects.

Mayor Eady asked Holly Bisig and Michele Jackson to discuss the economic impact of the proposal and the role solar power plays in our portfolio.

Michele Jackson stated that the slide provided to the City Council is essentially the same analysis that was provided to the City in August of 2020. It is a comparison of the cost of MEAG's ten-year plan, which is their plan of record, and the latest results of running the integrated resource plan with the City of Oxford committing four megawatts capacity of solar. Four megawatts of solar capacity produces about 10,000 megawatt hours per year. Putting 10,000 megawatt hours of solar into the system results in a significant savings by avoiding purchases of power on the market and by using less economic resources.

Starting in 2024, the City will see a savings of about 1.5% in costs. As time goes by and market rates for other sources increase while the cost of the solar energy stays flat, it is anticipated that cost savings will be up to more than 5% energy cost savings by 2030. Mayor Eady added that the capacity that would be added is expected to offset the anticipated shortage by taking Wansley offline. Entering into the contract should reduce or eliminate the need to purchase additional capacity at market rates.

Steve Jackson stated that the benefit of eliminating Wansley is the elimination of some fixed costs. As stated previously, the solar plan avoids any fixed costs other than the payments for power used.

Laura McCanless pointed out that there is a step-up agreement in the City's current agreement, so it is not something new. Mayor Eady added that before a City pays, MEAG will make a concerted effort to collect the money from the defaulting participant. Steve Jackson stated that if a City has to make a step-up payment, the City will be reimbursed when the defaulting participant pays what they owe. MEAG will also bring other participants on board to cure the default and make the developer whole, which can help minimize a participant's step-up cost.

Jeff Wearing asked what percentage of the City's portfolio four megawatts is. Michele Jackson stated she does not have the latest numbers in front of her but thinks it is a significant percentage. Oxford's capacity usually runs about 4 megawatts. Since four megawatts of solar capacity provides 2 megawatts of power, it would cover about 50% of the portfolio. Mayor Eady stated that it goes a long way toward decarbonizing the City's portfolio and stabilizing the City's cost, since the need to purchase electricity at market prices should be eliminated or reduced.

Mr. Wearing asked if there is a lot of down time in generation of solar power because of clouds, rain, etc. He does not believe that 50% of the City's portfolio needs to be invested in solar energy.

Ms. Jackson acknowledged Mr. Wearing's concern but stated that the other resources would serve as backup when the solar resources are not sufficient. Mayor Eady added that MEAG does a good job of optimizing the resources to ensure that participants use the resources that are most efficient for them at various times, and solar would be used in Oxford during the daytime hours. Mr. Jackson stated that the maximum load would be required in the summer during the day, which is also when solar power is generated most efficiently, especially in the southeast United States. Mayor Eady stated that a small percentage of the City's power also comes from hydroelectric resources through the Southeastern Power Association (SEPA).

Mr. Wearing expressed concern that the City would be paying for four megawatts of solar and only getting two megawatts of actual capacity. He also mentioned that there would be many gray days in winter that would not generate good solar power. Mayor Eady stated that the cost quoted per megawatt hour is on par with the cost for power generated by natural gas, which is much more volatile than the fixed price for solar power.

Holly Bisig stated that the City would only pay for power when it is buying the power from solar generation. James Windham stated that efficiency of the cells capturing the solar energy is only reduced to about 70-80% on cloudy days. They are not inoperable on cloudy days. Mr. Jackson stated that the City has a good mix of other reliable energy resources in its portfolio, including nuclear, hydroelectric, and coal from Plant Scherer. As coal becomes less viable, it will be transitioned out of the resource mix.

Mayor Eady stated that MEAG has a commitment to carbon neutrality by 2050. As older resources like coal roll off, they will continually be evaluating their mix to achieve that goal.

Art Vinson asked if the twenty-year contract accommodates provisions for inflation. Mr. Jackson stated that there is no adjustment provision for the price. It is a flat rate for twenty years. He also mentioned that utilizing renewable energy provides for energy credits. In twenty years, the City can renew the contract or walk away from it.

Mr. Vinson asked if there is a provision in the contract for the City of Oxford to terminate the contract if the cost becomes less optimal. Mr. Jackson stated there is not a termination clause in the contract based on economic changes. The contract is designed this way to provide the developer with the assurance that they will be paid for the commitments they are making. The termination clause only covers failure to perform under the terms of the contract. Mayor Eady added that the City's existing commitment for Plant Scherer includes physical plant costs that must be paid regardless of whether the resource is being used. The solar contract requires payment only if the resource is used, with no financing of physical assets.

George Holt asked if the City is obligated to purchase four megawatts. Mayor Eady advised that the City pays only for what it uses. Mr. Holt then asked what the significance is of the four megawatts. Mayor Eady stated that the City has an obligation to maintain their maximum capacity plus 15%. Even though the City usually uses about four megawatts, it must commit to around five megawatts to meet that requirement.

Steve Jackson stated that the City must commit to the maximum capacity to meet its demand. When solar is operating, MEAG will adjust other resources, so the system is balanced. The same would apply for Oxford's set of those resources. If the City is not using the solar power generated, it is being sold to someone else, and the City gets credit for the purchase.

Mr. Holt asked what happens if there is not a customer readily available to purchase the power not used by the City of Oxford. Mr. Jackson stated that they evaluate the needs of their forty-nine participants and see where the excess power can best be used, and other participants purchase it.

Lynn Bohanan asked what the disadvantage(s) is/are of agreeing to the contract. Ms. Jackson acknowledged that technology obsolescence is a risk. But the solar panel farms being set up now have a thirty-year life. The twenty-year deal is a good hedge against technology obsolescence. Other risks are a collapse in market prices; a sunny day when the City can't use its energy generated and there are not other participants that will make up the difference.

Another factor to consider is this contract will result in the generation of renewable energy certificates which have monetary value. Under the solar proposal the City of Oxford will be able to claim a large percentage of its system as renewable energy. This is something very important to Oxford College.

Mr. Windham asked what the City can do with the renewable energy certificates. Ms. Jackson stated that the certificates substantiate the claim that they are using renewable energy. They could also be marketed to customers for them to purchase. Ms. Jackson offered to provide a template for sales of renewable energy credits. Steve Jackson advised there is also a market for the certificates, and they could be used to fund a project in the City.

Mayor Eady requested a pause on the discussion of renewable energy credits so that other items on the agenda can be addressed. The City will need to vote on the resolution and contract in the August Regular Council Meeting. He thanked the representatives of MEAG for their attendance and participation in the meeting.

4. **Local Option Sales Tax** (Attachment C)
   Mayor Eady stated that Jerry Roseberry was instrumental in ensuring that Oxford's portion of the Local Option Sales Tax (LOST) supplied the City a significant amount of revenue. It is now time to renegotiate the percentages cities will receive with Newton

County. By the end of 2022, a new agreement between Newton County and the cities will need to be in place. The city managers in the County began meeting several months ago to discuss how they could position the cities for strong negotiations.

In speaking with experts, they discovered there are several criteria for determining apportionments. In the past, Newton County has used population as the method for determining the apportionments. One of the things Mayor Roseberry was able to do was ensure that the City of Oxford retained the same percentage in the last agreement as the one before. Consequently, the City's apportionment has been just over three percent for twenty years.

An engagement letter was sent to the City Councilmembers as part of proposal from a consulting service. The engagement letter lists eight criteria that can be used to determine the apportionments, one of which is population.

George Holt stated that the data the consultant is proposing to gather is information that is already public knowledge and data that the City already has. He does not see the need to hire a consultant to provide the data. Mayor Eady stated that the City Managers are bringing the proposal to their City Councils to hire the consultants to gather all the data and put it into a format that can be presented during negotiations within the context of the criteria. The total cost is $33,600 plus travel expenses. The City of Covington is willing to pay most of the cost and the rest would be divided between the other cities. The cost to the City of Oxford would be $2,800.

James Windham stated he does not see why the City Managers cannot compile this data, as this is what they are paid for. He feels there are other consulting services that may serve us better.

Mr. Holt stated that we need to hire someone who can negotiate effectively with the County; the City has the data.

Laura McCanless asked who would be designated to negotiate the LOST apportionments. Mayor Eady advised that the city managers and mayors of the cities would meet with representatives from the Newton County Board of Commissioners, and at that time, the cities would present their arguments for their selected approach. He also stated that the data is not assembled and in front of the City Council in a form that can be presented to anyone. The City Managers felt that a unified approach to compiling and presenting the data would be a better way to negotiate. Although a city may believe one of the criteria is best for them, the cities would come to a consensus for the negotiation.

Ms. McCanless asked what the LOST money is used for. Mayor Eady stated that it goes into the general fund and pays for office staff salaries, police officer salaries and equipment, streets and parks maintenance, and other general fund expenses. She expressed surprise at the current percentages. She feels that we are competitors with other cities in the County. Mayor Eady stated that the cities cannot go into this

negotiation as competitors. The conversations between the cities about conflicting policies driving their desired apportionments need to occur before going to Newton County. A unified front must be presented by the cities during negotiations. He does not think our City Manager has the time to gather the data. The point of the proposal is to outsource the data analysis piece of the negotiations.

Ms. McCanless agreed that the City is in a difficult position with its City Manager situation, but she believes the priorities of the various cities will drive which criteria they want to use and which services the money pays for in their cities. Mayor Eady agreed and stated that the analysis needs to be done to put that data in front of everyone so they can make sound decisions.

Mayor Eady stated he wants the process to be fair to all, and he believes that a strict population apportionment will not be fair. The proposed analysis would provide a common operating picture across all criteria, the way the pie can be sliced, the implications of using a particular criterion, and why that criterion may or not be the best one. The analysis would be provided by an objective third party that is not biased for or against any one city. The cities will need to come to a consensus about what criteria are best for all of them. He advised that Matt Pepper did speak to Jerry Roseberry, who stated that the biggest task is to get the City of Covington on board, and they are very enthusiastic about hiring the consultants.

Mayor Eady stated that this proposal needs to be voted on in August so that the contract can be executed for the data analysis. If the City of Oxford votes not to participate, the City of Covington will go forward with the analysis, which may or may not have any information of value to the City of Oxford.

Ms. McCanless does not feel that someone could be hired to gather the data to analyze the viability of the criteria for $2,800.

Mr. Holt stated that he understands that Mayor Eady may not feel comfortable entering into the negotiations without the data, and although he disagrees with it, he recommends going forward with it. He also stated that with the City of Covington on board, the other cities are almost obligated to participate. Mayor Eady stated that his approach is very similar, and he wants to ensure that the City of Oxford can go to the table with the data that is needed.

5. **Building Permit Services Contract** (Attachment D)
   James Windham asked that this discussion be tabled to give him more time to gather information.

6. **Work Session Meeting Review**
   a. Vote on Solar Purchase Power Contract in August
   b. Vote on LOST Data Analysis in August

7. **Executive Session**
   The City Council entered Executive Session at 8:30 p.m. to discuss personnel matters.

8. **Adjourn**
   **James Windham made a motion to adjourn the meeting at 9:00 p.m. George Holt seconded the motion. The motion was approved unanimously (6/0).**

Respectfully Submitted,

Marcia Brooks
City Clerk/Treasurer

# OXFORD MAYOR AND COUNCIL
# WORK SESSION
# MONDAY, JULY 19, 2021 – 6:30 P.M.
# CITY HALL (VIA TELECONFERENCE)
# A G E N D A

1. **Mayor's Announcements**

2. **Committee Reports –** The Trees, Parks and Recreation Board, Planning Commission, Downtown Development Authority, Sustainability Committee, and the Committee on Race will update the Council on their recent activities.

3. ***Solar Power Purchase Contract –** The Council will review the Power Purchase Contract for pending the solar resource with the Municipal Electric Authority of Georgia. We have attached a copy of the contract.

4. ***Local Option Sales Tax** – The Council will discuss contracting services to analyze options for calculating the City's future LOST proportion.

5. ***Building Permit Services Contract –** The Council will review the city's contract with Bureau Veritas for building permitting services. We have attached a copy of the contract.

6. **Work Session Meeting Review –** Mayor Eady will review all the items discussed during the meeting.

7. **Executive Session**

*Attachments

**To:** **MEAG Power Solar Participants**

**From:** **Steve Jackson, Sr. VP and COO** Steve

**Date:** **June 24, 2021**

**Subject:** **Solar Initiative – Power Purchase Contract**

MEAG Power staff has been working through a Request for Proposals process to acquire solar output and services on behalf of the Participants. Given changes in Participant interest, which at last survey amounted to 92 MW, MEAG Power shifted our efforts to a developer offering a smaller facility sized at 80 MW. MEAG Power staff has completed negotiations of the Solar Purchase Power Agreement (SPPA) between MEAG Power and this second solar developer that will provide interested Participants the avenue to add photovoltaic solar power to their resource portfolio.

In conjunction with the SPPA, any Participant that commits to an entitlement share of the output under this SPPA (a Solar Participant) will execute a Power Purchase Contract (PPC) with MEAG Power. This Power Purchase Contract addresses the Solar Participants entitlement share to the products, your cost and payment obligations and the financial assurance provided by the Solar Participants to the project developer. This PPC is non-recourse to MEAG Power and the project developer will be looking directly to the Solar Participants for the security of the payments. The enclosed material includes: 1) the PPC for execution; 2) the SPPA as Exhibit A of the PPC for information only; 3) a form of Resolution as Exhibit B of the PPC for your use with your governing body; and 4) a form of Opinion of Counsel as Exhibit C of the PPC for use by your attorney. If viewing on your computer, please use the bookmark feature to help you navigate to these sections.

In order to maintain the late 2023 commercial operation date for the project, all agreements are requested by mid-August 2021 and the following steps are required.

1. Participant execution of the Power Purchase Contract (PPC) including the Participants desired maximum MW amount
2. Based on all received nominations, MEAG Power will determine the final Participant entitlement share based on the formula included in the PPC. This step may require prorating each Participant's MW amount if the total amount of nominations exceed 80 MW. (If the maximum nominations do not amount to 80 MW, MEAG Power will have to terminate the current initiative). An example of the proration calculation is available on request.
3. MEAG Power Board approval of the SPPA for 80 MW.
4. MEAG Power execution of the SPPA and Solar Participant PPCs with final entitlement share.

If you are a Participant engaged with ECG for the supply of solar energy to Walmart, the Renewable Energy Customer Agreement (RECA), expected to be executed by Walmart by July 2nd, and the solar tariff have been provided by ECG through a separate transmittal. The approval and execution of those agreements is another step in the effort.

**In order to support your consideration of this agreement, MEAG Power and ECG staff will host two virtual meetings to discuss the key provisions of the PPC, SPPA, and RECA. These meetings will be offered at the following dates/times:**

1. **Tuesday, June 29th at 2:30 p.m.**
2. **Thursday, July 8th at 10:00 a.m.**

Your Regional Manager will be in contact to discuss your participation in one of these meetings, and also any further assistance needed from MEAG Power staff in this effort.

We are very pleased that the final price for solar energy and services under the SPPA is very competitive and fixed for 20 years. With the project interconnecting to the ITS through a new 115 kV breaker at MEAG Power's Pitts substation, there will be no Transmission Service Facilities fee assessed by Georgia Power from MEAG Power. With this ideal interconnection arrangement, we estimate a savings of approximately $2.00/MWh in total solar costs to our Participants.

In order to support the project schedule, execution of the PPC (step 1) is requested by Friday, August 13, 2021. Please contact your Regional Manager with any questions or concerns.

cc: Jim Fuller

POWER PURCHASE CONTRACT
BETWEEN MUNICIPAL ELECTRIC AUTHORITY OF
GEORGIA AND THE UNDERSIGNED PARTICIPANT

This Power Purchase Contract (this "**Contract**"), made and entered into as of _____, 2021, by and between the Municipal Electric Authority of Georgia (the "**Authority**" or "**MEAG Power**"), a public body corporate and politic and a public corporation and an instrumentality of the State of Georgia, created by the provisions of the Municipal Electric Authority Act, Ga. L. 1976, p. 107, as amended (the "**Act**"), and the City of Oxford (the "**Solar Participant**"), a political subdivision of the State of Georgia.

WITNESSETH:

WHEREAS, pursuant to the Act, the Authority has previously entered into one or more Power Sales Contracts (each, as amended, a "**Power Sales Contract**") with eligible political subdivisions, including the Solar Participant (each, a "**Participant**") to provide, from defined production projects and sources, for the Participants' bulk electric power supply needs;

WHEREAS, one such Power Sales Contract, the Project One Power Sales Contract (the "**Project One Power Sales Contract**"), further provides in Section 401 thereof that the Authority will provide or cause to be provided to each of the participants thereto, including the Solar Participant, (the "**Project One Participants**") its supplemental bulk power supply ("**Supplemental Power**") (i.e., that portion of the Solar Participant's bulk power supply in excess of its entitlement to power, energy, output and services from any MEAG Power project) during each month of each Power Supply Year (therein defined);

WHEREAS, Section 404 of the Project One Power Sales Contract provides that a Project One Participant may elect to procure an alternate source of Supplemental Power other than that provided by the Authority, subject to providing notice to the Authority in accordance with subpart (c) of that Section;

WHEREAS, the Authority adopted a Supplemental Power Supply Policy in March of 1999, as amended (the "**Supplemental Power Policy**"), which, in part, waived the notice requirements provided for in Section 404(c) of the Project One Power Sales Contract;

WHEREAS, the Authority has an opportunity to procure a substantial amount of Supplemental Power for a multi-year term through a Power Purchase Agreement with Pineview Solar LLC (the "**Company**") for the output and services of approximately 80 MWac from a photovoltaic solar energy generation facility located in Wilcox County, Georgia (the "**Facility**") to be constructed, owned, operated, and maintained by the Company (hereinafter the "**SPPA**");

WHEREAS, in accordance with the Supplemental Power Policy, the Solar Participant and certain other Project One Participants (each such participating Project One Participant referred to herein as a "**PPOP**" and each such PPOP other than the Solar Participant an "**Other PPOP**") have requested that the Authority purchase from the Company power, output and services of the Facility to provide for their Supplemental Power;

WHEREAS, the Authority and the Solar Participant agree that this Contract is supplemental to and authorized by the Project One Power Sales Contract;

WHEREAS, the Authority has entered into power purchase contracts with the other PPOPs that are substantially similar to this Contract (each such power purchase contract an "**Other PPC**"); provided that each Other PPC reflects the applicable PPOP's Maximum MW Subscription (as defined below);

WHEREAS, the Authority and the Solar Participant agree that the payment obligations under this Contract shall constitute the general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant is pledged, obligating the Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due hereunder;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

1.

1.1 SPPA. The SPPA, in substantially the form attached hereto as Exhibit A, describes the terms under which the Products (as defined therein) of the Facility shall be made available to the Authority for the provision of solar power to the Solar Participant.

1.2 Entitlement Share.

(a) Maximum MW Subscription: The Solar Participant's "**Maximum MW Subscription**" is _____ MWac.

(b) Entitlement Share. The Solar Participant's "**Entitlement Share**" shall be that percentage of the Facility's output to which the Solar Participant is entitled. The Solar Participant's Entitlement Share shall calculated as follows:

(i) Step One: The amount of the Solar Participant's Maximum MW Subscription shall be multiplied by a fraction, the numerator of which is the number of MWAC actually comprising the Facility and the denominator of which is the sum of the amount of the Solar Participant's Maximum MW Subscription and the amount of the maximum MW subscriptions of the Other PPOPs.

(ii) Step Two: The solution to Step One, above, shall be divided by the number of MWAC actually comprising the Facility (with the solution to this Step Two being the percentage of the Facility's output constituting the Solar Participant's Entitlement Share).

1.3 Initial Payment Obligation. The Authority shall deliver to the Solar Participant an initial billing statement up to ninety (90) days prior to the Facility's anticipated commencement of the delivery of Test Energy pursuant to the SPPA (such anticipated date of delivery referred to as the "**Start Date**"). The initial billing statement shall set forth the Solar Participant's allocable share of the sum of the

estimated Solar Costs and estimated MEAG Costs (both terms, as defined in Section 1.4 below) for the month the Authority anticipates will generate the highest aggregate amount of Solar Costs and MEAG Costs (the "**Maximum Monthly Amount**") during the year subsequent to the year of the Start Date. Amounts collected pursuant to this Section 1.3 (the "**Escrow Amount**") shall be held in escrow by the Authority, subject to use by the Authority pursuant to the terms hereof. At the end of each calendar year commencing the year after the year of the Start Date the Authority shall recalculate the Solar Participant's Maximum Monthly Amount for the next year and, (i) if the Maximum Monthly Amount exceeds the Escrow Amount, the Authority shall include an amount equal to such deficit on the Solar Participant's next Billing Statement (as defined in Section 1.4) and (ii) if the Maximum Monthly Amount is less than the Escrow Amount, the Authority shall, at the Authority's election, either (A) refund to the Solar Participant an amount from the Escrow Amount equal to such excess or (B) credit such excess to the Solar Participant's next succeeding Billing Statement(s).

1.4 Ongoing Payment Obligations.

(a) The Authority shall deliver to the Solar Participant a monthly Billing Statement commencing within the thirty (30) days preceding the anticipated Start Date and continuing through the Term. For purposes of this Contract, a "**Billing Statement**" shall be a written statement prepared or caused to be prepared monthly in advance by the Authority that shall set forth the Solar Participant's estimated payment obligations pursuant to the terms hereof.

(b) The Solar Participant shall remit payment monthly in advance. The Solar Participant's payment obligations hereunder for a particular month shall be an amount equal to the Solar Participant's allocable share of the sum of the estimated Solar Costs and the estimated MEAG Costs. To the extent the amount paid by the Solar Participant pursuant to the preceding sentence is either greater or less than the Solar Participant's allocable share of the sum of the actual Solar Costs and the actual MEAG Costs for a particular month, the Authority: (i) shall credit any excess payment to the Solar

Participant's next Billing Statement and (ii) may satisfy any deficit from the Solar Participant's Escrow Amount and include a corresponding charge on the Solar Participant's next Billing Statement (so as to restore the Solar Participant's Escrow Amount).

For purposes of this Contract, (i) "Solar Costs" for a particular month shall mean the gross amount due to the Company or any other person for the month by the Authority pursuant to the terms of the SPPA, but excluding any interest charged by the Company to the Authority pursuant to Section 10.3 of the SPPA and (ii) "MEAG Costs" for a particular month shall mean all costs incurred by the Authority during the month in connection with the purchase from the Company and delivery to the Solar Participant of the Solar Participant's Entitlement Share, including, but not limited to, (A) costs of (I) scheduling the delivery of solar energy, (II) energy imbalance penalties and (III) all other charges imposed on the Authority and associated with the transmission and delivery of solar energy to the Solar Participants, and (B) a share determined by the Authority to be allocable to this Contract, of all (I) administrative and general costs and (II) operation and maintenance costs, in each case related to the operation and conducting the business of the Authority, including salaries, fees for legal, engineering, and other services and all other expenses properly related to the conduct of the affairs of the Authority.

(c) The Solar Participant's payment obligations to the Authority arising under this Contract shall constitute general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant shall be and the same hereby is pledged to provide the funds required to fulfill all obligations arising under this Contract. Unless such payments or provisions for such payments have been made from the revenues of the Solar Participant's electric system or from other available funds, the Solar Participant will annually in each and every fiscal year during the term of this Contract include in its general revenue or appropriation measure sums sufficient to satisfy the payments required to be made in each year by this Contract until all payments hereunder have been made in full.

(d) Except as specifically provided herein, any payment due under this Contract shall be paid within ten (10) calendar days of the Solar Participant's receipt of the Billing Statement. The Parties agree to work in good faith to resolve any disputed amounts prior to the due date for such amount, and agree that any resolution of such disputed amount may, if necessary be addressed by appropriate adjustment to subsequent Billing Statements.

1.5 Rate Covenant. The Solar Participant will establish, maintain, and collect rates and charges for the electric service of its electric system so as to provide revenues sufficient to enable the Solar Participant to pay to the Authority all amounts payable under this Contract and to pay all other amounts payable from and all lawful charges against or liens on the revenues of its electric system.

2.

Term. The term of this Contract shall commence on the date that is ninety (90) days prior to the Start Date and shall continue through and include the end of the twentieth (20th) Contract Year (as defined in the SPPA), unless the SPPA is terminated prior to such date, at which point this Contract will terminate upon the Solar Participant's full and complete satisfaction of its duties and obligations hereunder.

3.

Products Constitute Supplemental Bulk Power. The Solar Participant acknowledges that all Products contemplated in the proposed SPPA, if implemented, will constitute Supplemental Power, provided, however, that the Solar Participant agrees that it will not exercise its rights under the Supplemental Power Supply Policy or Section 404(c) of the Project One Power Sales Contract to opt-out of its payment obligations under this Contract at any time prior to the expiration of the term of the SPPA.

4.

Pledge of Payments. All payments in respect of Solar Costs required to be made by the Solar Participant pursuant to this Contract, and any or all rights to collection or enforcement of such payments, may be pledged to secure the payment of the Authority's obligations under the SPPA.

5.

Governing Law; Venue. This Contract shall be interpreted and enforced in accordance with the laws of the State of Georgia, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Parties agree that the venue for any action arising out of, or in regard to, this Contract shall be in the Superior Court of Fulton County, Georgia and each Party hereby consents to jurisdiction over it in Fulton County, Georgia.

6.

Mutual Representations and Warranties. Each Party represents and warrants to the other that, as of the Effective Date:

(a) Organization. It is duly organized and validly existing under the laws of the State of Georgia.

(b) Authority. It (i) has the requisite power and authority to enter into this Contract and (ii) has, or as of the requisite time will have, all regulatory and other authority necessary to perform hereunder.

(c) Corporate Actions. It has taken all corporate or other applicable actions, including provision of notice, required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

(d) No Contravention. The execution, delivery and performance and observance hereof by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to

which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Applicable Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other Person other than such consents or approvals that are not yet required but expected to be obtained in due course.

(e) Valid and Enforceable Agreement. This Contract is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by Georgia law, including the Act, and general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally, laws restricting the availability of equitable remedies, and limitations on legal remedies against public bodies corporate and politic of the State of Georgia.

(f) Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of such Party's knowledge, threatened against such Party with respect to this Contract or the transactions contemplated hereunder, in each case, that if it were decided against such Party would materially and adversely affect such Party's ability to perform its obligations hereunder.

(g) Legal Opinions. The Solar Participant shall authorize the execution and delivery of this Contract by resolution of its governing body in substantially the form attached hereto as Exhibit B. Further, the Solar Participant shall deliver to the Authority an opinion of counsel (such counsel to be reasonably acceptable to the Authority) as to the due authorization, execution and delivery and the enforceability of this Contract, in substantially the form attached hereto as Exhibit C.

7.

Default; Remedies for Default.

7.1 Default. Failure of the Solar Participant to timely make to the Authority any of the payments for which provision is made in this Contract shall constitute a default on the part of the Solar

Participant (a "**Default**"). A Default may be cured by the Solar Participant's (i) full payment of any past due amounts owed by the Solar Participant to the Authority pursuant to the terms hereof (the "**Primary Cure Payments**"), (ii) full payment of any interest which has accrued thereon (as referenced in Section 7(c), below) (the "**Interest Cure Payments**"), and (iii) with reference to paragraph (h)(i) of this Section 7, full restoration of the Escrow Amount, unless and until the Authority exercises its rights pursuant to Section 7(h)(iii), below (at which point the Default may no longer be cured).

7.2 Continuing Obligation, Right to Discontinue Service. In the event of a Default, the Solar Participant shall not be relieved of its liability for payment of the amounts in default (including interest accrued thereon pursuant to Section 7(c), below), and the Authority shall have the right to recover from the Solar Participant any amount in default (including interest accrued thereon pursuant to Section 7(c), below). In enforcement of any such right of recovery, the Authority may bring any suit, action, or proceeding in law or in equity, including mandamus and action for specific performance as may be necessary or appropriate to enforce any covenant, agreement or obligation to make any payment for which provision is made in this Contract against the Solar Participant, and the Authority may, upon the occurrence of a Default and at the Authority's discretion, cease and discontinue providing all or any portion of the Solar Participant's Entitlement Share.

7.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid, which rate shall not exceed the maximum permissible under Georgia law. The defaulting Solar Participant shall be and shall remain solely liable for the payment of any interest arising under this Section 7(c). For purposes of this Contract, the "**Contract Interest Rate**" shall mean one hundred (100) basis points per annum plus the rate per annum equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published); provided that if at any time during the Term, the Wall Street Journal no longer

publishes a prime lending rate, the prime lending rate for purposes of the calculation of the Contract Interest Rate will be average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate.

7.4 Levy of Tax for Payment. In the event of a Default, the Solar Participant shall provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due under the provisions of this Contract in each year over the remainder of the life of this Contract and the Authority shall have the right to bring any suit, action or proceeding in law or in equity, including mandamus and action for specific performance, to enforce the assessment and collection of a continuing direct annual tax upon all the taxable property within the boundaries of the Solar Participant sufficient in amount to provide such funds annually in each year of the remainder of the life of this Contract.

7.5 Other Default by Solar Participant. In the event of a failure of the Solar Participant to establish, maintain, or collect rates or charges adequate to provide revenue sufficient to enable the Solar Participant to pay all amounts due to the Authority under this Contract or in the event of a failure of the Solar Participant to take from the Authority its Supplemental Power in accordance with the provisions of this Contract, or in the event of any default by the Solar Participant under any other covenant, agreement or obligation of this Contract, the Authority may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Contract against the Solar Participant.

7.6 Default by The Authority. In the event of any default by the Authority under any covenant, agreement or obligation of this Contract, the Solar Participant may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance as

may be necessary or appropriate to enforce any covenant, agreement, or obligation of this Contract against the Authority.

7.7 Abandonment of Remedy. In case any proceeding taken on account of any default shall have been discontinued or abandoned for any reason, the parties to such proceedings shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, owes, and duties of the Authority and the Solar Participant shall continue as though no such proceeding had been taken.

7.8 Application of Available Remedies.

(a) In the event of a Default by the Solar Participant pursuant to Section 7(b) hereof, the Authority shall:

(i) Apply the Escrow Amount (as collected from the Solar Participant pursuant to Section 1.3, above) to the defaulting Solar Participant's unpaid obligations hereunder;

(ii) Transfer all or any part of the energy generated by the Facility and attributable to the defaulting Solar Participant's Entitlement Share to other Participants or any other person, firm, association or corporation, public or private (such transferee to be determined at the Authority's discretion), for the fair market value of such energy (a "**Default Sale**"); and

(iii) Use the proceeds of such Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale) to (A) satisfy the balance of the defaulting Solar Participant's unpaid obligations hereunder and/or (B) to the extent such payment obligations have been fully satisfied pursuant to Section 7(h)(i)(1) and/or this Section 7(h)(i)(3), fully or partially restore the defaulting Solar Participant's Escrow Amount.

(b) The excess, if any, of the proceeds of the Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale) over the defaulting Solar Participant's unpaid payment

obligations for a particular month (calculated pursuant to Section 1.4 and inclusive of any interest amount accrued pursuant to Section 7(c), above) shall be for the benefit of the non-defaulting Other PPOPs.

(c) Notwithstanding any Default Sale, the defaulting Solar Participant shall remain liable to the Authority for the full payment of the amount reflected on its Billing Statements plus any interest accrued thereon as if such Default Sale had not been made; except that such liability shall be discharged by an amount equal to the proceeds of the applicable Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale). In the event the Solar Participant's Default continues uncured for ninety (90) calendar days or the Solar Participant fails to timely satisfy its payment obligations hereunder for either three (3) consecutive months or five (5) out of eight (8) months, the Authority may sell the defaulting Solar Participant's Entitlement Share to the other Participants or any other person, firm, association or corporation, public or private (such transferee to be determined at the Authority's discretion); provided that, if such a transfer occurs, the defaulting Solar Participant shall remain liable to the Authority for the full payment of the amount attributable to its Entitlement Share plus any interest accrued thereon as if such transfer had not been made; except that such liability shall be discharged to the extent that the Authority receives payment (net of the Authority's expenses incurred in facilitating such transfer) from the transferee.

7.9 Obligations with Respect to Defaults of Other PPOPs.

(a) If an Other PPOP (a "**Defaulting PPOP**") defaults on its payment obligations (the amount of such default the "**Default Amount**") pursuant to its Other PPC, then the Authority shall pursue its remedies against such Defaulting PPOP as set forth in Section 7(h)(iii) of the Defaulting PPOP's Other PPC (which remedies are identical to the provisions set forth in Section 7(h)(iii) of this Agreement). All of the proceeds generated from the application of such remedies (net of the Authority's expenses incurred in pursuing such remedies) shall be applied to reduce the Default Amount.

(b) The amount of any remaining Default Amount (calculated without including any interest accrued pursuant to Section 7(c) of the Defaulting PPOP's Other PPC) after application of the remedies described in clause (i), above, is referred to as a "**Special Cost Increase.**" Special Cost Increases shall be allocated among the non-defaulting PPOPs (including the Solar Participant) *pro rata* based on their Entitlement Shares. The Solar Participant (along with each other non-defaulting Other PPOP) shall be obligated to satisfy its allocable share of the Special Cost Increase; provided that the Solar Participant's share of a Special Cost Increase shall not exceed 25% of the amount otherwise reflected on the Solar Participant's Billing Statement for the month to which the Special Cost Increase is attributable.

(c) If a Defaulting PPOP cures a default pursuant to Section 8(a) of its Other PPOP subsequent the Solar Participant's (and non-defaulting Other PPOP's) payment of a corresponding Special Cost Increase, then the Authority shall distribute the applicable Primary Cure Payments (as determined pursuant to the Defaulting PPOP's Other PPC) ratably to the non-defaulting PPOPs (including the Solar Participant) who satisfied their ratable share of the Special Cost Increase. Interest Cure Payments attributable to Solar Costs shall be paid by the Authority to the Company in satisfaction of the Authority's obligations under the SPPA. Interest Cure Payments attributable to MEAG Costs shall be distributed to the non-defaulting PPOPs ratably based on their Entitlement Shares.

8.

The Solar Participant shall use commercially reasonable efforts to promptly notify the Authority in writing upon the Solar Participant's receipt of a request for a copy of the SPPA pursuant to the Georgia Open Records Act (O.C.G.A. § 50-14-1, *et seq.*). Such notification shall be provided prior to the Solar Participant's release of the SPPA.

In witness whereof, the Authority has caused this Contract to be executed in its corporate name by its duly authorized officers and the Authority has caused its corporate seal to be hereunto impressed and attested; the Solar Participant has caused this Contract to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto impressed and attested, and delivery hereof by the Authority to the Solar Participant is hereby acknowledged, all as of the day and year first above written.

MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA

By:_____
Name: James E. Fuller
Title: President and CEO

ATTEST:

By:_____
Name:_____
Title:_____

(SEAL)

[Solar Participant Signature is on the next page]

CITY OF OXFORD

By:_____
Name:_____
Title:_____

ATTEST:

By:_____
Name:_____
Title:_____

EXHIBIT A

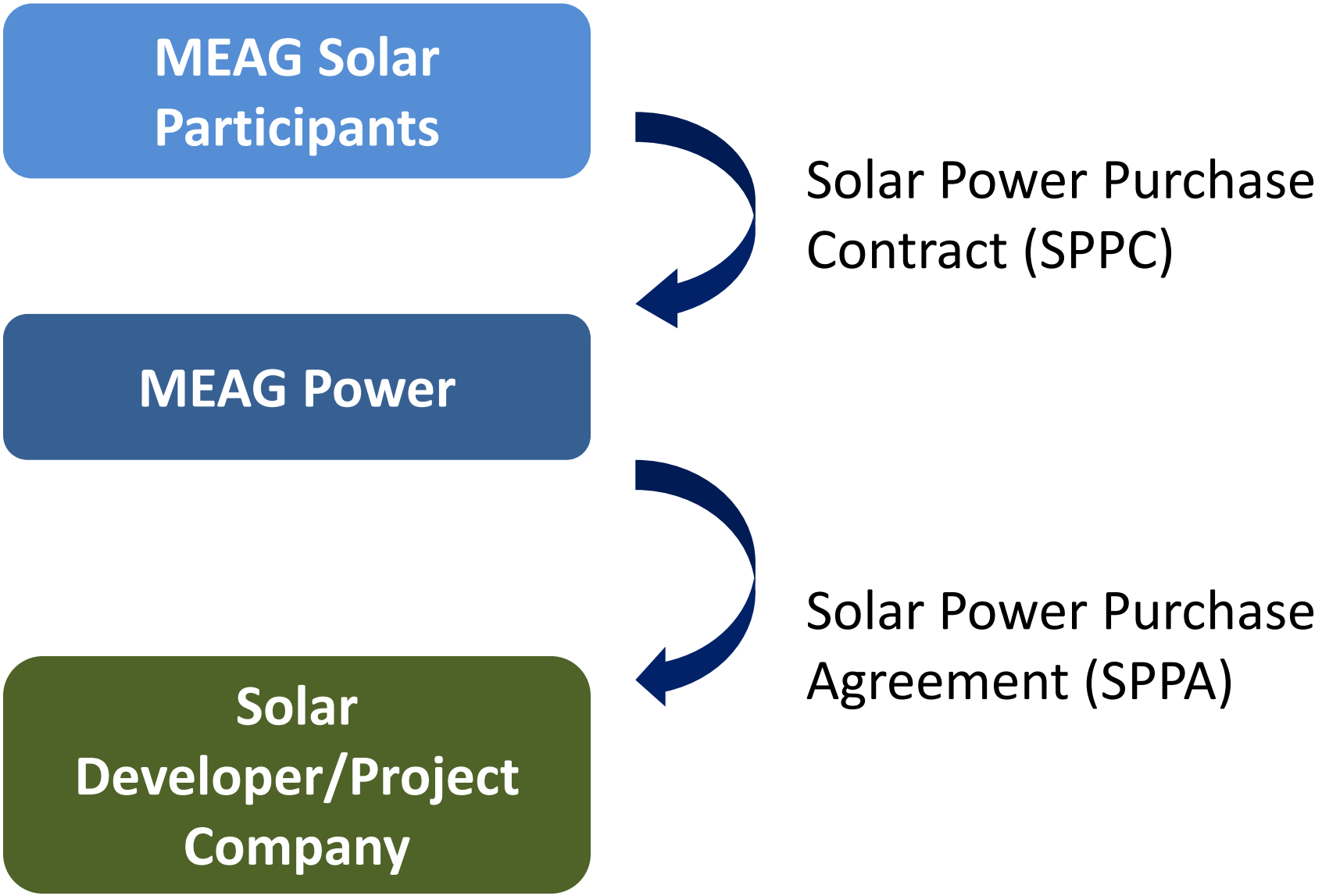
**FORM OF SPPA**

[Form of SPPA begins on the next page]

# MEAG Solar Initiative

## June 29, 2021

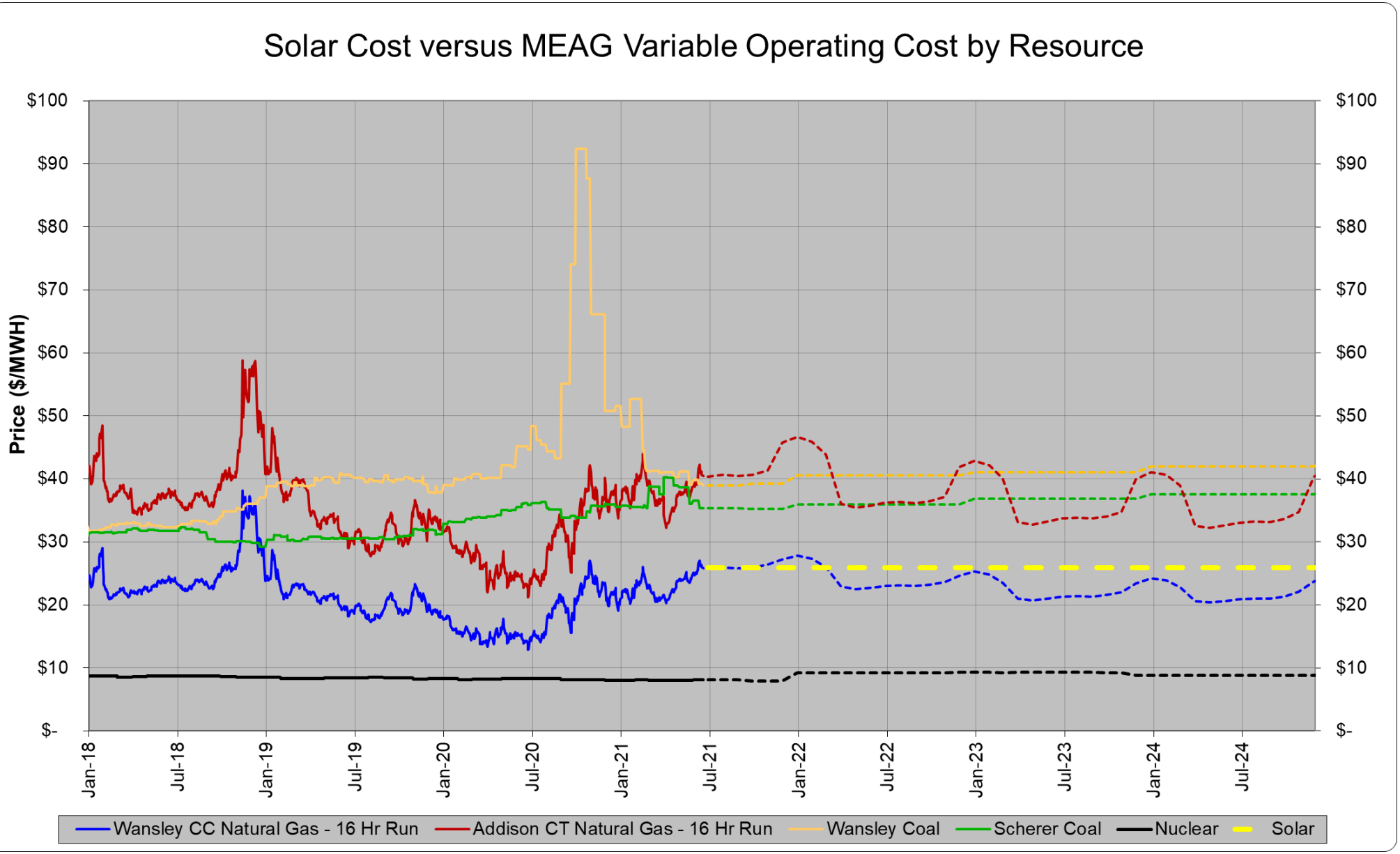
# MEAG Solar Initiative Vision



# Solar Initiative Status

- Solar Power Purchase Agreement (SPPA)
  - SPPA negotiations complete – ready for execution
    - 80 MWs of output
    - 20 year fixed price
- Solar Power Purchase Contract (SPPC)
  - Agreement complete – ready for execution
    - Entitlement shares limited to 80 MW total
    - Allocation formula included in SPPC
- Renewable Energy Customer Agreement (RECA)
  - Agreement complete – ready for execution
  - Execution by Walmart expected by July 2nd

# How does Solar Energy Fit in Our Portfolio?



# Solar Power Purchase Agreement Summary

- Solar Power Purchase Agreement (SPPA) Parties
  - MEAG Power (Buyer)
  - Solar Developer (Seller)

- Terms of the Agreement address
  - Development and construction of the facility
  - Products and pricing
  - Operations and Maintenance of the facility
  - Other contractual provisions such as default and termination
  - Commitments are non-recourse to MEAG Power

# Key SPPA Terms

| | |
|---|---|
| Term of PPA | • 20 years |
| Products | • Net Output, Environmental Attributes, Capacity Rights and Ancillary Services |
| Contract Quantity ($Mw_{ac}$) | • 80 $MW_{ac}$ |
| Contract Price | • $XX.XX/MWh |
| Delivery Point | • Delivered into the ITS |
| Guaranteed COD | • Dec. 31, 2023<br>• Delay Damages paid by Seller: $XX/$MW_{ac}$ per day<br>• Buyer may terminate PPA if delayed 365 days with Termination Payment |
| Coordination with Transmission Owner | • Seller pays Interconnection Costs<br>• Buyer pays costs for delivery. |

# Key SPPA Terms

| | |
|---|---|
| Production or Availability Guarantee | • Liquidated Damages paid by Seller if annual production is less than XX% of expected |
| Seller Credit Support | • During Construction = $XM<br>• During Operation = $XM |
| Seller Defaults | • Bankruptcy<br>• Fails to pay LDs or other payment due<br>• If Net Output during two consecutive years is less than XX% of expected production |
| Default by Participant | • Failure of Participant to pay is non recourse to MEAG<br>• MEAG to immediately pursue all remedies under a defaulting Participants SPPC |

# Solar Power Purchase Contract Summary

- Solar Power Purchase Contract (SPPC) Parties
  - MEAG Power
  - Participants
- Terms of the Agreement address
  - Participant entitlement share to the products
    - Formula for calculation of entitlement share
  - Cost and payment obligations
  - Financial assurance provided by Participants that extend to solar developer

# Key SPPC Terms

| | |
|---|---|
| Term | • 20 Year – Matched to the PPA |
| Product | • % Entitlement Share to the PPA Products |
| Participant Payment Obligation | • Initial Payment for escrow – estimated as max. monthly amount for following year. Trued up annually.<br>• Month Ahead Billing for budgeted Solar Costs + MEAG Costs<br>• Monthly payments under SPPC with out a 60 day grace period.<br>• Default in making such payment will mandate immediate action to pursue all remedies |
| Continuing Default | • MEAG may permanently transfer (sell) the defaulting Participant's entitlement |

# Key SPPC Terms

| | |
|---|---|
| Solar Costs | • Amounts arising under the PPA |
| MEAG Costs | • Costs associated with the transmission and delivery of solar energy:<br>  • Scheduling<br>  • Energy imbalance, and<br>• Other allocable costs:<br>  • Working Capital<br>  • MEAG A&G<br>  • MEAG O&M |
| True-Up of Costs | • Advance billing true-up to actual costs |

# Key SPPC Terms

| | |
|---|---|
| Financial assurance | • General obligation, full faith and credit taxing power pledge |
| Step Up Provisions | • In the event a Participant defaults, each non-defaulting Participant is obligated to pay for a prorata share of all sums due from the defaulted Participant (excluding interest), up to 25% of each Participant's % Entitlement Shares. Sums due will be determined after sale of energy into the market. |

# Key SPPC Terms

| | |
|---|---|
| Entitlement Share Determination | • Formula based on total Maximum MW Subscription requested and 80 MW available output.<br>• Participant Maximum MW Subscription adjusted based as follows:<br>  • Participant Max MW x (80 MWs/Total MW Subscription)<br>• Entitlement share equals:<br>  • Adjusted MW Subscription/ 80 MWs |

Example:

Participant Maximum Subscription Request - 10 MWs

Total Subscription Requests – 92

Adjusted Participant MW subscription – 10 MWs x (80/92)= 8.696 MWs

Entitlement share equals 8.696MWs/80 MWs = 10.87%

# SPPC Exhibits

- Three exhibits are included as part of the SPPC in order to support the approval process.
  - Exhibit A – Form of the solar Power Purchase Agreement
  - Exhibit B – Form of Authorizing Resolution of Solar Participant
  - Exhibit C – Form of Opinion of Counsel to the Solar Participant

# Next Steps

- SPPC execution and nomination of desired MW commitment by Solar Participants
- Determination of entitlement shares based on MW nomination and 80 MW facility size
- MEAG Power Board approval of the SPPA following completion of Participant actions.
  - Target is Board approval at the August 2021 meeting

# QUESTIONS?

# POWER PURCHASE AGREEMENT

**BETWEEN**

**PINEVIEW SOLAR LLC**

**AND**

**MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA**

**dated as of**

**_____, 2021**

**TABLE OF CONTENTS (to be updated)**

**Page**

**EXHIBITS**

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the "**Agreement**"), entered into as of this __ day of _____ 2021, is between Pineview Solar LLC (the "**Seller**"), a Delaware limited liability company, and the Municipal Electric Authority of Georgia (the "**Buyer**" or "**MEAG Power**"), a public body corporate and politic and an instrumentality of the State of Georgia, created by provisions of the Municipal Electric Authority Act, Ga. L. 1976, p. 107, as amended (the "**Act**"). Seller and Buyer are sometimes hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**."

## BACKGROUND RECITALS

WHEREAS, Seller intends to construct, own, operate and maintain an 80 MWac nameplate capacity photovoltaic solar energy generation facility located in Wilcox County, Georgia, which is more fully described on **Exhibit A** (the "**Facility**");

WHEREAS, pursuant to the Act, the Buyer has entered into one or more Power Sales Contracts, as amended (each, a "**Power Sales Contract**"), with eligible political subdivisions (each, a "**Participant**"), for the provision of bulk power and other services to such Participants;

WHEREAS, under the applicable Power Sales Contracts, the Buyer has agreed to obtain for or provide to the Participants Supplemental Bulk Power Supply ("**Supplemental Power**");

WHEREAS, the Act authorizes the Buyer to execute power purchase contracts and other agreements with publicly or privately owned entities in order to provide or make available an adequate, dependable, and economical supply of energy and related services to its Participants;

WHEREAS, in accordance with the applicable Power Sales Contracts and the Buyer's Supplemental Power Supply Policy, certain Participants (the "**Solar Participants**") have requested that the Buyer purchase from the Seller power, output and services of the Facility to provide Supplemental Power to the Solar Participants;

WHEREAS, in order to make Supplemental Power generated by the Facility available to the Solar Participants, each Solar Participant has, or will enter into a Power Purchase Contract with the Buyer (each, a "**PPC**") under which such Solar Participant shall obtain its Entitlement Share of the Products (hereinafter defined) and incur its respective share of the payment obligations hereunder; each Solar Participant's payment obligations under its PPC are general obligations to the payment of which its full faith and credit are pledged, obligating such Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments when due thereunder; and

WHEREAS, Seller desires to sell and deliver to Buyer for sale to its Solar Participants, and Buyer desires to purchase and receive from Seller, the Products (as such term is hereinafter defined) associated with the Contract Amount as defined herein, in each case, generated by the Facility, all in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

## SECTION 1
## DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

"**Acceptable Credit Rating**" means, with respect to Seller, having a Credit Rating of no less than (as applicable): (a) "BBB-" from S&P, or (b) "Baa3" from Moody's.

"**Acceptable REC Registry**" means the North American Renewables Registry or any other registry as mutually agreed to by the Parties.

"**Act**" is defined in the Preamble.

"**Actual Capacity**" means the maximum installed instantaneous generation capacity of the completed Facility at which the Facility can operate during the first Contract Year of operation, and as adjusted thereafter for degradation, expressed in MWac as measured on the AC side of the inverters, when operated in compliance with the Generation Interconnection Agreement and consistent with the operating parameters provided by the manufacturer of the Facility equipment.

"**Affiliate**" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct the management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise.

"**Agreement**" is defined in the preamble and includes Exhibits A - F, Exhibits 1 and 2, and any amendments hereto that are executed by the Parties.

"**Ancillary Services**" means the services associated with the Contract Amount that the Facility is capable of providing, without any modifications to the Facility or the Seller's operation of the Facility, to support the transmission of capacity and energy from generation resources to loads while maintaining the reliable operation of the GITS.

"**Applicable Law**" means any applicable federal, state and local law, statute, regulation, rule, action, order, tariff, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body.

"**Business Day**" means any day Monday through Friday from 9 a.m. to 5 p.m. Eastern Prevailing Time excluding nationally recognized public holidays.

"**Buydown Liquidated Damages**" means an amount equal to the product of (a) the positive difference between (i) the Contract Amount and (ii) the Actual Capacity of the Facility as of the Outside Commercial Operation Date and (b) $50,000 per MWac. To be clear, if the difference is negative, the Buydown Liquidated Damages is zero dollars ($0).

"**Buyer**" is defined in the preamble.

"**Buyer Initiated Curtailment**" means a scenario in which production and/or deliveries of Net Output from the Facility is curtailed due to an act or omission of Buyer.

"**Buyer Indemnitees**" is defined in Section 12.1.1.

"**Buyer's Cost to Cover**" means the product of (a) Buyer's replacement cost for Products (including any charge, cost or expense incurred to import the Products) during the Performance Measurement Period for which the determination is being made, as reasonably determined by Buyer, minus the Contract Price during the Performance Measurement Period, and (b) the Minimum Production Guarantee for such Performance Measurement Period, minus the Net Output for such Performance Measurement Period determined in accordance with Section 6.10.1, which will include all Deemed Delivered Output and Deemed Generated Energy from Curtailments during such Performance Measurement Period (such amount under this clause (b) being the "**Deficient Quantity**"). If the calculation in clause (a) renders a negative number, then the amount under this clause (a) shall be $0.00. An Example illustrating the calculation of Buyer's Cost to Cover under certain stated assumptions is set forth in **Exhibit D**.

"**Capacity Rights**" means any current or future defined characteristic, certificate, benefit, product, tag, credit, attribute, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Actual Capacity from the Facility, or from the Facility's capability and ability to produce energy. Capacity Rights do not include Environmental Attributes, Ancillary Services or any Tax Credits.

"**Cash Deposit**" means United States currency, deposited with a Qualified Issuer in an interest bearing account, in which Buyer holds a first and exclusive perfected security interest pursuant to an escrow agreement, account control agreement or other agreement, either: (i) in an account under which Buyer is designated as beneficiary with sole authority to withdraw cash from the account or otherwise access the funds in the account; or (ii) held in trust by the Qualified Issuer as escrow agent with instructions to pay claims made by Buyer pursuant to this Agreement.

"**Change in Law**" is defined in Section 14.6.

"**Commercial Operation**" means that not less than the Required Percentage of the Contract Amount is fully operational and reliable and is fully interconnected and synchronized with the GITS, which occurs when all of the following events have occurred:

a. Seller shall have entered into a Generation Interconnection Agreement with Transmission Owner;

b. Buyer shall have received a certificate addressed to Buyer from an officer of Seller certifying that: (i) the Nameplate Capacity of the Facility is at least equal to the Required Percentage of the Contract Amount; (ii) the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement and the Generation Interconnection Agreement; and (iii) all Permits to construct and/or operate the Facility in compliance with all

Applicable Law and this Agreement have been obtained and are in full force and effect, other than Permits which would not adversely affect Seller's ability to operate the Facility;

c. Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that: (i) in accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed; (ii) all required interconnection tests have been completed; and (iii) not less than the Required Percentage of the Contract Amount is physically interconnected with the GITS in accordance with the Generation Interconnection Agreement and synchronized with the GITS;

d. Seller has provided the Seller Credit Support to Buyer as required pursuant to Section 8.1; and

e. No Seller Event of Default is outstanding or remains uncured in accordance with Article 11.

"**Commercial Operation Date**" means the date that Commercial Operation is achieved or deemed achieved pursuant to Section 2.7.

"**Confidential Information**" is defined in Section 24.1.

"**Construction Credit Support**" means a Letter of Credit, Cash Deposit, or Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Three Million Dollars ($3,000,000).

**"Contract Amount"** means 80 MWac. In the case that Buydown Liquidated Damages are paid by Seller, the Contract Amount shall be adjusted as of the Outside Commercial Operation Date pursuant to Section 2.2.3.

**"Contract Interest Rate**" means one hundred (100) basis points per annum plus the rate per annum equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published); provided that if at any time during the Term, the Wall Street Journal no longer publishes a prime lending rate, the prime lending rate for purposes of the calculation of the Contract Interest Rate will be average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate.

"**Contract Price**" means $25.91 per MWh.

"**Contract Year**" means each consecutive twelve (12) month period during the Term that commences with the Commercial Operation Date or one of its anniversaries, provided that if this Agreement is terminated prior to its expiration, the Contract Year in which termination occurs will begin on the anniversary of the Commercial Operation Date immediately preceding the termination date (or if such termination occurs during the first Contract Year, on the Commercial Operation Date) and will end on the date of the termination of this Agreement.

"**Costs**" means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably and actually incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations (which, for the sake of clarity, does not include the non-defaulting Party's losses or gains with respect to any such hedging arrangement) or entering into new arrangements which replace this Agreement (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder), and to the extent permitted by Georgia law, all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with remedies initiated pursuant to the provisions of this Agreement.

"**Credit Rating**" means the rating then assigned to Seller's senior, unsecured long-term debt obligations (not supported by third party credit enhancements) or if Seller does not have a rating for its senior, unsecured long-term debt, then the rating assigned to Seller as an issuer rating by S&P, Moody's or any other rating agency agreed to by Buyer.

"**Deemed Delivered Output**" is defined in Section 4.4.2.

**"Deemed Generated Energy from Curtailments"** is defined in Section 4.4.1.

"**Defaulting Solar Participant**" means a Solar Participant that fails to timely make payments to Buyer pursuant to the terms of its PPC.

"**Deficient Quantity**" is defined in the definition of "Buyer's Cost to Cover."

"**Delay Damages**" means the damages payable by Seller, under the circumstances and subject to the limits described in Sections 2.2.1 or 2.2.2, which for any given day are equal to the product of Fifty Dollars ($50) per MWac and the Nameplate Capacity of the Facility required to deliver the Contract Amount.

"**DSP Failure**" means the default listed in Sections 11.1.3(a)(2).

"**Effective Date**" is defined in Section 2.1.

"**Electric System Authority**" means each of NERC, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the geographic area in which the Facility is located.

"**Entitlement Share**" means the portion, measured in MWac, of the Contract Amount to which a Solar Participant is entitled pursuant to its PPC.

"**Entitlement Share Percentage**" means a percentage, calculated with respect to each Solar Participant by dividing such Solar Participant's Entitlement Share by the Contract Amount. The sum of each Solar Participant's Entitlement Share Percentage shall equal 100%.

"**Emergency**" means an abnormal GITS condition requiring manual or automatic action to maintain GITS frequency, or to prevent loss of firm load, equipment damage, or tripping of system

elements that could adversely affect the reliability of an electric system or the safety of persons or property or a condition that requires implementation of emergency procedures.

"**Environmental Attributes**" means any and all current and future attributes, claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled that are created or otherwise arise from the existence, ownership, or operation of the Facility associated with the Net Output, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include, but are not limited to, the following (a) RECs, (b) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (c) any avoided emissions of carbon dioxide, methane, and other greenhouse gases as defined by U.S. laws or regulations as of the Effective Date or as they may be modified during the Term. Environmental Attributes do not include (i) the Tax Credits or any local, state or federal cash grants, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership of, or energy production from, any portion of the Facility or (ii) cash grants, depreciation deductions and other tax benefits arising from ownership or operation of the Facility. In the case of each of the foregoing clauses (i) and (ii), as between the Parties, Seller shall maintain all rights, title and interest in and to such items.

"**Event of Default**" is defined in Section 11.1.

"**Example**" means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

"**Expected Annual Production**" means the expected production from the Contract Amount for each Contract Year as set forth in **Exhibit B**.

"**Facility**" is defined in the Recitals and is more fully described in attached **Exhibit A**.

"**FERC**" means the Federal Energy Regulatory Commission or its successor.

"**Final Completion Date**" means the earlier of (a) the Date on which the Facility achieves Commercial Operation with respect to one hundred percent (100%) of the Contract Amount required to deliver the Contract Amount or (b) if Buydown Liquidated Damages are paid pursuant to Section 2.2.3, the Outside Commercial Operation Date.

"**Financing Party**" means any Person other than a Seller Affiliate (or any trustee or agent on behalf of such Person) lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity or cash equity investor, back-leverage financing or credit derivative arrangement) to Seller or its Affiliates, all or a portion of which is used (a) for the construction, term or permanent funding, financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); or (c) for any development funding, financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility.

"**Financing Party Consent or Estoppel**" means (a) a collateral assignment consent agreement, to be entered into by Seller, Buyer and Seller's Financing Parties, in a form reasonably agreed by such parties and containing customary terms and conditions, that recognizes and consents to (i) Seller's collateral assignment of rights and obligations under this Agreement and (ii) the Financing Parties' rights to be notified of, and allowed to cure, any breach or default of this Agreement by Seller, and to exercise, subject to the notice, cure rights, and remedies provisions of this Agreement, any step-in rights consented to by Seller, and other customary terms as reasonably may be requested by such Financing Parties or (b) other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions, including an estoppel certificate or other agreements with Financing Parties reasonably requested by such Financing Parties, in a form reasonably agreed by such parties and containing customary terms and conditions for tax equity or cash equity investors.

"**Force Majeure**" is defined in Section 14.1.

"**Forced Outage**" means any unplanned outage or derating of the Facility that results in the reduction of, cessation in the delivery of, or inability to deliver the Products, and specifically includes NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit C** (or similar successor unplanned outages if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes any Maintenance Outage or Planned Outage.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time.

"**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, determined in a commercially reasonable manner. Gains shall be measured on the basis of one hundred percent (100%) of the Expected Annual Production for each Contract Year (or portion thereof) during the remainder of the Term (ignoring any early termination of this Agreement).

"**Generation Interconnection Agreement**" means that certain Large Generator Interconnection Agreement by and between Seller and Transmission Owner, and any amendments thereto, containing terms and conditions governing the interconnection and parallel operation of the Facility with GITS.

**"Georgia Integrated Transmission System (GITS)"** means that statewide transmission system jointly owned by MEAG Power, Georgia Transmission Corporation, Dalton Utilities and Georgia Power. Individual transmission lines and substations that make up the GITS are owned and maintained by the individual participants but they are planned and operated as one system, providing each owner with transmission access throughout Georgia.

"**Good Industry Practice(s)**" means any applicable practices, methods, and acts engaged in or approved by a significant portion of the electric industry for construction, interconnection and operation of facilities similar to the Facility during the relevant time period, or the practices, methods and acts which, in the exercise of reasonable judgment by a prudent solar energy generation operator in light of the facts known or which should reasonably have been known at

the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, manufacturers' recommendations, reliability, safety, expedition, Applicable Law and the requirements of any Governmental Authority having jurisdiction. "Good Industry Practices" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include the acceptable practices, methods or acts generally accepted by the photovoltaic solar generating industry for facilities similar to the Facility during the relevant time period.

"**Governmental Authority**" means any supranational, federal or state authority or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing. An Electric System Authority shall also be considered to be a Governmental Authority.

"**Green-e Renewable Energy Standard**" means the Green-e Renewable Energy Standard Version 3.3, or successor version.

"**Guaranteed Commercial Operation Date**" means December 31, 2023, provided that the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis for each day of delay in Seller's development, permitting, construction, interconnection or completion of the Facility associated with (a) the occurrence of a Force Majeure event, (b) a breach by Buyer of any of its obligations under this Agreement, (c) the occurrence of an Emergency condition, or (d) a delay in the in-service date of the Interconnection Facilities beyond the expected date set forth in the Generation Interconnection Agreement, including as a result of a delay in the completion of any Network Upgrades, provided that such delay is not the result of Seller's failure to perform its obligations under the Generation Interconnection Agreement.

"**Guarantor**" means a Person that has issued a Guaranty and (a) has an Acceptable Credit Rating or (b) has otherwise been approved by Buyer, in Buyer's reasonable discretion, in the case of a Guaranty that is provided as Seller Credit Support.

"**Guaranty**" means a guaranty of payment (and not performance) issued by a Guarantor substantially in the form attached hereto as **Exhibit F-1** or otherwise in form and substance satisfactory to Buyer, in Buyer's reasonable discretion; it being acknowledged and agreed that, in the event Seller is obligated to post Seller Credit Support pursuant to the terms of this Agreement and Buyer is not satisfied with the form and substance of the proposed Guaranty (in Buyer's reasonable discretion), the Seller shall nevertheless be obligated to post the required Seller Credit Support by means of a Letter of Credit or Cash Deposit.

"**Interconnection Facilities**" means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the GITS, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, metering, telecommunications, and associated equipment, substations, relay and switching equipment, and safety equipment, including any Network Upgrades.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as such law may be amended or superseded.

"**Involuntary Curtailment**" is defined in Section 4.4.1.

"**ITCs**" means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

"**kWh**" means kilowatt hour.

"**Letter of Credit**" means an unconditional, irrevocable letter of credit issued by a Qualified Issuer either (a) substantially in the form of the letter of credit attached hereto as **Exhibit E** or (b) otherwise in form and substance satisfactory to Buyer, in Buyer's reasonable discretion, in the case of a Letter of Credit provided as Seller Credit Support

"**Liabilities**" is defined in Section 12.1.1.

"**Licensed Professional Engineer**" means a Person proposed by Seller and acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in the United States, and in all States for which such Person is providing a certification, evaluation or opinion with respect to matters specific to such State, (b) has no economic relationship or association with Seller or Buyer other than services previously or currently being rendered to Seller or Buyer or their respective Affiliates in a capacity similar to the services being provided by such Person in relation to the Facility, and (c) is not a representative of Seller or Buyer or a manufacturer or supplier of any equipment installed in the Facility.

"**Losses**" means, with respect to a 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, determined in a commercially reasonable manner. Losses shall be measured on the basis of one hundred percent (100%) of the Expected Annual Production for each Contract Year (or portion thereof) during the remainder of the Term (ignoring any early termination of this Agreement).

"**Maintenance Outage**" means any planned outage of the Facility for maintenance that occurs before the next regularly scheduled Planned Outage, which results in reduction of, cessation in the delivery of, or inability to deliver, the energy associated with the Actual Capacity to the Point of Delivery, and specifically includes NERC Event Type MO, as set forth in attached **Exhibit C** (or similar successor planned maintenance outages if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes a Forced Outage or a Planned Outage.

"**MEAG Power**" is defined in the Preamble.

"**Minimum Production Guarantee**" is defined in Section 6.10.1.

"**Moody's**" means Moody's Investors Service, Inc. or its successor.

"**MW**" means megawatt.

"**MWac**" means megawatts (associated with output, rating or capacity of a solar PV facility) as measured after conversion of the direct current into alternating current by the Facility invertors.

"**MWh**" means megawatt hour.

"**Nameplate Capacity**" means, as of any date, the aggregate installed nameplate capacity of the Facility, expressed in MWac, as of such date.

"**NERC**" means the North American Electric Reliability Corporation or its successor.

"**Net Output**" means, for any period, the amount of energy generated by the Facility and delivered to the Point of Delivery, as measured by the Revenue Meter (it being understood that all electrical energy produced by the Facility, excluding line losses and Station Use, shall be delivered to the Point of Delivery).

"**Network Upgrades**" means any upgrades to the GITS that are required in order to provide interconnection service for the Facility and for which the Facility is allocated costs under the Generation Interconnection Agreement or any affected system agreement with an adjoining electric transmission system owner or operator.

"**Notice to Proceed Date**" means the date on which notice is issued by Seller to its contractor under the engineering, procurement and construction agreement or similar contract relating to the construction of the Facility, authorizing and directing the full and unrestricted commencement of construction of the Facility. The Notice to Proceed Date shall occur on or before October 1, 2022.

"**Output**" means all energy produced by the Facility.

"**Outside COD Termination Payment**" is defined in Section 2.2.2.

"**Outside Commercial Operation Date**" means the date that is three hundred and sixty-five (365) days after the Guaranteed Commercial Operation Date.

"**Participant**" is defined in the Preamble.

"**Party**" and "**Parties**" are defined in the Preamble.

"**Performance Measurement Period**" means the full one (1) Contract Year period commencing on the first day of the first Contract Year and the full one (1) Contract Year period commencing on each subsequent Contract Year.

"**Permits**" means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility, sale and delivery of Net Output, and occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

"**Person**" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or Governmental Authority.

"**Planned Outage**" means any regularly scheduled planned outage of the Facility for maintenance, repair or other purposes, which results in the reduction of, cessation in the delivery of, or inability to deliver energy associated with more than ten percent (10%) of the Actual Capacity of the Facility to the Point of Delivery, and specifically includes NERC Event Type PO, as set forth in attached **Exhibit C** (or similar successor planned outages, if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes any Maintenance Outage or Forced Outage.

"**Point of Delivery**" means the point of interconnection between the Facility and the GITS as specified in the Generation Interconnection Agreement, and is described in attached **Exhibit A**.

"**Power Sales Contract**" is defined in the Preamble.

"**PPC**" is defined in the Preamble.

"**Pre-Construction Credit Support**" means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, as determined by Seller, provided by Seller for the benefit of Buyer in an amount equal to One and One Half Million Dollars ($1,500,000).

"**Premises**" means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

"**Prevailing Time**" or "**PT**" means Eastern Standard Time or Eastern Daylight Time, as applicable on the day in question.

"**Products**" means the Net Output, Environmental Attributes, Capacity Rights and Ancillary Services.

"**Qualified Issuer**" means a U.S. commercial bank (or a foreign bank with a U.S. branch) authorized under Applicable law to perform the actions described in this Agreement for the benefit of the Buyer and having total assets of at least ten billion dollars ($10,000,000,000) and a Credit Rating of no less than (as applicable): (a) "A-" from S&P, or (b) "A3" from Moody's, or (c) if such bank has a Credit Rating at such time from both S&P and Moody's, "A-" from S&P and "A3" from Moody's.

"**REC**" or "**Renewable Energy Credit**" shall mean tradable renewable energy credits that contain all the greenhouse gas (GHG) emissions reduction benefits, including carbon dioxide (CO2) reduction benefits, associated with the MWh of renewable electricity when it was generated and are therefore eligible to be certified (whether or not actually certified) in accordance with the Green-e Renewable Energy Standard.

"**Required Facility Documents**" means all Permits, authorizations, rights and agreements reasonably necessary for construction, operation, and maintenance of the Facility.

"**Required Percentage**" means ninety-five percent (95%).

"**Revenue Meter**" means the meter installed at the Point of Delivery in order to measure the energy delivered by the Facility.

"**ROFR Notice**" is defined in Section 6.6.

"**S&P**" means Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Seller**" is defined in the preamble.

"**Seller Credit Support**" means (a) for the period commencing ten (10) Business Days after the Effective Date and ending ten (10) days after the issuance of the Notice to Proceed, the Pre-Construction Credit Support, (b) for the period commencing ten (10) days after the issuance of the Notice to Proceed and ending on the day before the Commercial Operation Date, the Construction Credit Support, (c) for the period commencing on the Commercial Operation Date and ending on the last day before the tenth ($10^{th}$) Contract Year (or, if earlier, the termination of this Agreement and the payment of all amounts owed to Buyer hereunder), the Subsequent Credit Support Tier I, and (d) for the period commencing on the first day of the $11^{th}$ Contract Year and lasting until the expiration or termination of this Agreement and the payment of all amounts owed to Buyer hereunder, the Subsequent Credit Support Tier II.

"**Seller Indemnitees**" is defined in Section 12.1.2.

"**Solar Participant(s)**" is defined in the Preamble and is further defined to mean each of Buyer's Participants that hold an Entitlement Share to the Products pursuant to a PPC between the Solar Participant and Buyer. The Solar Participants and their respective Entitlement Share Percentages, are set forth on Schedule 1, attached hereto.

"**Station Use**" means energy produced by the Facility used to operate the Facility or to perform preventative or corrective maintenance to the Facility.

"**Subsequent Credit Support Tier I**" means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Four Million Dollars ($4,000,000).

"**Subsequent Credit Support Tier II**" means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Three Million Dollars ($3,000,000).

"**Supplemental Power**" is defined in the Background Recitals.

"**Supplemental Power Supply Policy**" means that certain policy regarding Supplemental Power Supply adopted by Buyer on March 17, 1999, as revised and adopted on October 20, 1999, and as further revised and adopted on September 19, 2002.

"**Tax Credits**" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities, including ITCs.

"**Term**" is defined in Section 2.1.

"**Termination Payment**" means, with respect to a Party, the positive difference, if any, between (a) Losses and Costs incurred by such Party as a result of termination of this Agreement, less (b) Gains of such Party as a result of termination of this Agreement, expressed in U.S. dollars. If the Termination Payment calculation results in a number less than or equal to zero dollars ($0), the Termination Payment shall be zero dollars ($0).

"**Test Energy**" means any Net Output during periods prior to the Commercial Operation Date and any associated Capacity Rights.

"**Transmission Owner**" means MEAG Power or any successor that owns the transmission lines, Interconnection Facilities (other than those Interconnection Facilities owned by Seller) and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

1.2 Rules of Interpretation.

1.2.1 General. Terms used in this Agreement but not specifically defined in this Section 1 shall have meanings as commonly used in the English language and, where applicable, in Good Industry Practices. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity include a reference to such entity's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; I all accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; and (h) all references to a particular law or statute means that law or statute, as amended from time to time.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4 Examples. Example calculations and other Examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the Example itself or the matters assumed for purposes of such Example. If there is a conflict between an Example and the text hereof, the text shall control.

1.2.5 Agreement is a Service Contract. The Parties acknowledge and agree that this Agreement is a service contract within the meaning of Section 7701(e) of the Internal Revenue Code.

## SECTION 2
## TERM; FACILITY DEVELOPMENT

2.1 Term. This Agreement is entered into as of the date hereof (the "Effective Date") and, unless earlier terminated as provided herein, shall remain in effect until the end of the twentieth (20th) Contract Year (the "Term").

2.2 Facility Construction and Delay Damages and Buydown Liquidated Damages.

2.2.1 Seller shall use commercially reasonable efforts to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date. Seller shall pay Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date through the Commercial Operation Date unless the Agreement is terminated pursuant to Section 2.2.2.

2.2.2 If the Commercial Operation Date has not been achieved on or before the Outside Commercial Operation Date, Buyer may terminate this Agreement by written notice to other Party on or before the tenth (10th) day following the Outside Commercial Operation Date. If Buyer elects to terminate this Agreement pursuant to this Section 2.2.2, (a) this Agreement shall terminate and thereafter have no force or effect, (b) Seller shall owe to Buyer liquidated damages equal to the amount of the Construction Credit Support required as of such date, reduced by the aggregate amount of all damages or payments (including Delay Damages) paid by Seller to Buyer on or before such date (the "Outside COD Termination Payment"), and (c) neither Party shall have any further obligations or liabilities hereunder.

2.2.3 If Commercial Operation is declared before the Facility is capable of delivering the full Contract Amount, Seller shall use commercially reasonable efforts to cause the Facility to reach the capability of delivering the full Contract Amount. If the Facility has not reached the capability of delivering the full Contract Amount on or before the Outside Commercial Operation Date, Seller shall pay to Buyer liquidated damages in the amount of the Buydown Liquidated Damages, in which case the Contract Amount shall, for the remainder of the Term, be equivalent to the Actual Capacity of the Facility as of the Outside Commercial Operation Date.

2.3 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date or due to the Actual Capacity of the Facility being less than that required to deliver the full Contract Amount as of the Outside Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages, Outside COD Termination Payment, and Buydown Liquidated Damages, as agreed to by the Parties and set forth herein, are a fair and reasonable calculation of such damages. Delay Damages, the Outside COD Termination Payment, and Buydown Liquidated Damages shall be payable in lieu of actual damages and, notwithstanding any other provision of this Agreement:

(i) the Buyer's right to terminate this Agreement and receive the Outside COD Termination Payment pursuant to Section 2.2.2 shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for any failure to achieve Commercial Operation by the Outside Commercial Operation Date. For the avoidance of doubt, such failure shall not be considered an Event of Default; and

(ii) Buydown Liquidated Damages shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for the Actual Capacity of the Facility being less than the Contract Amount as of the Outside Commercial Operation Date. For the avoidance of doubt, such failure shall not be considered an Event of Default.

2.4 Delay Damages Invoicing. By the fifteenth (15th) day following the end of a calendar month in which any Delay Damages have accrued, Buyer shall deliver to Seller an invoice showing Buyer's computation of Delay Damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than thirty (30) days after issuance of such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice.

2.5 Quarterly and Monthly Reports. From the Effective Date until thirty (30) days following the Final Completion Date:

(a) On or before the fifteenth ($15^{th}$) day of each calendar quarter prior to the Notice to Proceed Date, commencing with the first full calendar quarter beginning after the Effective Date, Seller shall provide a quarterly status report containing the information set forth in Exhibit 1; and

(b) On or before the fifteenth ($15^{th}$) day of each calendar month commencing with the calendar month next following the calendar month in which the Notice to Proceed Date occurs, Seller shall provide a monthly status report containing the information set forth in Exhibit 1.

Upon Buyer's reasonable request, representatives of Seller and Buyer shall schedule and attend telephone or in person conferences periodically during such period to discuss the status of (i) the development, construction and installation of the Facility and (ii) the achievement of Commercial Operation. Also, upon Buyer's request, Seller will facilitate Buyer's onsite inspection and monitoring of construction activities in accordance with and subject to Section 6.11.

2.6 Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

2.7 Commercial Operation. Seller shall provide written notice to Buyer stating when Seller believes that Commercial Operation has been achieved and the Actual Capacity of the Facility that will be provided to Buyer at such time together with (a) if applicable, Seller's statement of the Actual Capacity of the Facility that Seller intends to complete but that is not yet completed and (b) the certificates described in the definition of Commercial Operation. Buyer shall have ten (10) Business Days after receipt of such notice to state with specificity any

requirements that Buyer reasonably believes have not been satisfied. If, within such ten (10) Business Day period, Buyer does not respond or Buyer notifies Seller confirming that Commercial Operation has been achieved, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Buyer notifies Seller within such five (10) Business Day period that Buyer believes Commercial Operation has not been achieved, Seller shall address the concerns stated in Buyer's notice, and Commercial Operation shall occur on the date such concerns are addressed to the mutual satisfaction of both Parties, as specified in a notice from Buyer to Seller, or as otherwise determined pursuant to the dispute resolution provisions set forth in Section 23. The Parties agree that review and approval of the conditions to Commercial Operation may occur on an ongoing and incremental basis as such conditions are satisfied.

## SECTION 3
## REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that, as of the Effective Date:

3.1.1 Organization. It is duly organized and validly existing under the laws of the jurisdiction of its organization.

3.1.2 Authority. It (a) has the requisite power and authority to enter into this Agreement, (b) has, or as of the requisite time will have, all regulatory and other authority necessary to perform hereunder, and (c) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.1.3 Corporate Actions. It has taken all corporate, limited liability company or other applicable actions, including provision of notice, required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution, delivery and performance and observance hereof by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Applicable Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other Person other than such consents or approvals that are not yet required but expected to be obtained in due course.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by Georgia law, including the Act, and general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally, laws restricting the availability of equitable remedies, and limitations on legal remedies against public bodies corporate and politic of the State of Georgia.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of such Party's knowledge, threatened against such Party or any Affiliate of such Party with respect to this Agreement or the transactions contemplated hereunder, in each case, that if it were decided against such Party would materially and adversely affect such Party's ability to perform its obligations hereunder.

3.1.7 Service Contract. The Parties agree and acknowledge this Agreement purports to be a "service contract" within the meaning of Section 7701I of the Internal Revenue Code, the Parties hereto intend it to be such, and the Agreement should be construed accordingly.

3.2 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

## SECTION 4
## PURCHASE AND SALE OF PRODUCTS

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and Buyer shall purchase the Products, including the Net Output delivered at the Point of Delivery. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, all right, title, and interest that Seller may have in and to the associated RECs existing during the Term.

4.1.1 In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, the Test Energy.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any portion of the Products to any Person other than Buyer; *provided, however*, that this restriction shall not apply to the extent (i) such sales are permitted pursuant to Section 11.3 or Section 14.3, or (ii) Buyer has committed an Event of Default that is not attributable to a DSP Failure.

4.3 Title and Risk of Loss. Seller shall deliver the Products and the Test Energy free and clear of all liens, security interest, claims and encumbrances. Title to and risk of loss of the Net Output and the Test Energy shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by the Net Output and the Test Energy up to the Point of Delivery. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by the Net Output and the Test Energy at and from the Point of Delivery. All proceeds received by Buyer from the resale by Buyer of any portion of Products and the Test Energy shall belong exclusively to Buyer.

4.4 Curtailment. The rights and obligations of the Parties with respect to curtailments of energy from the Facility are as follows:

4.4.1 Involuntary Curtailments. Seller shall not be obligated to sell and make available energy from the Facility (or the other Products), and Buyer shall not be obligated to purchase, receive or pay for energy from the Facility (or the other Products), that is not delivered to the Point of Delivery due to any of the following (singularly, "**Involuntary Curtailment**" and collectively, "**Involuntary Curtailments**"): (a) to the extent resulting from an Emergency, or (b) during times and to the extent that an event of Force Majeure prevents either Party from delivering or receiving energy from the Facility, provided that, with respect to (b), a Party shall not be relieved of its obligations pursuant to this Section 4.4.1 if the underlying cause for the occurrence of the Force Majeure was within the reasonable control of such Party or any Person retained by such Person. For each Involuntary Curtailment, the total lost production caused by such Involuntary Curtailment, expressed in MWh ("**Deemed Generated Energy from Curtailments**"), shall be the Net Output that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery pursuant to this Agreement due to such Involuntary Curtailment, as reasonably determined by Seller using Expected Annual Production for the applicable Contract Year, Facility availability information, relevant weather conditions, solar insolation at the Facility and other pertinent data for the relevant period.

4.4.2 Buyer Initiated Curtailment. If at any time there is a Buyer Initiated Curtailment, then Seller shall not be obligated to sell and make available energy from the Facility (or the other Products). For each Buyer Initiated Curtailment, the total lost production caused by the Buyer Initiated Curtailment, expressed in MWh ("**Deemed Delivered Output**"), shall be the Net Output that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery pursuant to this Agreement due to such Buyer Initiated Curtailment, as reasonably determined by Seller using Expected Annual Production for the applicable Contract Year, Facility availability information, relevant weather conditions, solar insolation at the Facility and other pertinent data for the relevant period. Buyer shall compensate Seller for each MWh of Deemed Delivered Output at the Contract Price. Additionally, Buyer shall be responsible for any charges or penalties assessed by Transmission Owner or any Electric System Authority against either Party as a result of any Buyer Initiated Curtailment.

4.5 Environmental Attributes, Capacity Rights and Ancillary Services.

4.5.1 Purchase and Sale of Environmental Attributes. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller will deliver all Environmental Attributes associated with the Net Output to Buyer. The Parties will make such filings, execute such periodic documentation and take all actions as are reasonably required to deliver documentation of the transfer of Environmental Attributes to Buyer through the Acceptable REC Registry. If the Acceptable REC Registry is unavailable, then Seller will deliver the Environmental Attributes to Buyer in an Environmental Attribute attestation to Buyer or other legal form to be agreed to by the Parties. Title and risk of loss of the Environmental Attributes shall transfer from Seller to Buyer at the time the Environmental Attributes are transferred to Buyer's Acceptable REC Registry account or at the time the Environmental Attributes are otherwise transferred to Buyer.

4.5.2 Registration. Seller shall cooperate in any registration reasonably requested by Buyer of the Facility in any renewable portfolio standard or other equivalent program in which Buyer may wish Seller to register or maintain registration of the Facility, to the extent that Buyer pays the costs and expenses associated therewith; provided, that in no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Environmental Attributes or register or comply with any renewable portfolio standard or other equivalent program.

4.5.3 Purchase and Sale of Capacity Rights. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to the Capacity Rights, if any, existing during the Term and associated with the Net Output to Buyer. It is acknowledged and agreed by the Parties that Seller shall not be obligated to incur any incremental costs or expenses (a) in developing, constructing or operating the Facility in order for Seller to provide Capacity Rights to Buyer or (b) to accredit the capacity of the Facility. In no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Capacity Rights.

4.5.4 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and, subject to Section 4.2, covenants that during the Term it will not sell or attempt to sell to any Person, the Capacity Rights, if any. Subject to Section 4.2, during the Term, Seller shall not report to any Person that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any Person that the Capacity Rights exclusively belong to it.

4.5.5 Purchase and Sale of Ancillary Services. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to the Ancillary Services, if any, existing during the Term and associated with the Net Output to Buyer. It is acknowledged and agreed by the Parties that Seller shall not be obligated to incur any incremental costs or expenses in developing, constructing or operating the Facility in order for Seller to provide Ancillary Services to Buyer. In no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Ancillary Services.

4.5.6 Representation Regarding Ownership of Ancillary Services. Seller represents that it has not sold, and, subject to Section 4.2, covenants that during the Term it will not sell or attempt to sell to any Person, the Ancillary Services, if any. Subject to Section 4.2, during the Term, Seller shall not report to any Person that the Ancillary Services, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any Person that the Ancillary Services exclusively belong to it.

4.5.7 Further Assurances. At Buyer's request, and, as between Buyer and Seller, at Buyer's sole cost and expense, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights and Ancillary Services, if any, to Buyer.

4.6 Other Products. This Agreement does not create for Buyer any rights or interests in any product generated by the Facility, other than Net Output, associated Environmental Attributes, associated Capacity Rights and associated Ancillary Services. Seller shall retain all rights, title and interest in and to (i) any and all existing or future products that are produced by or in any manner attributable to the Facility (other than Net Output, Environmental Attributes, Capacity Rights and Ancillary Services, in each case as generated by the Facility during the Term), (ii) Tax Credits or any local, state or federal cash grants, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership of, or energy production from, any portion of the Facility, and (iii) cash grants, depreciation deductions and other tax benefits arising from ownership or operation of the Facility.

## SECTION 5
## CONTRACT PRICE; COSTS

5.1 Contract Price. Commencing on the Commercial Operation Date and continuing through the Term, Buyer shall pay the Contract Price for all deliveries to Buyer of the Products. The Contract Price includes the consideration to be paid by Buyer to Seller for the Products, and Seller shall not be entitled to any compensation over and above the Contract Price for the Products, except as set forth in Section 4.4.2.

5.1.1 For the period prior to the Commercial Operation Date, Buyer shall pay seventy-five percent (75%) of the Contract Price for all deliveries to Buyer of Test Energy.

5.2 Payment Obligation. Buyer's payment obligations associated with a DSP Failure under this Agreement (including any fees, charges, penalties or interest required hereunder unless expressly provided to the contrary) are limited to the amounts actually paid to Buyer by each Solar Participant pursuant to its respective PPC. Buyer hereby conveys, assigns, pledges and grants to Seller a security interest in all amounts actually paid by each Solar Participant pursuant to its PPC. The payment obligation of each Solar Participant pursuant to its PPC shall be supported by its full faith and credit taxing power and, in the event a Solar Participant becomes a Defaulting Solar Participant, Buyer hereby commits to Seller that it shall promptly pursue each of its remedies available to it pursuant to (x) the Defaulting Solar Participant's PPC, including, if necessary enforcement of the Defaulting Solar Participant's taxing power and (y) the non-defaulting Solar Participants' PPC obligations to make payments arising from the nonpayment of a Defaulting Solar Participant. Buyer further represents and warrants that it has delivered to Seller substantially true and correct copies of each PPC and Buyer covenants that it shall not amend any PPC if to do so would have an adverse effect on Seller's rights or expected revenues under this Agreement.

5.3 Costs and Charges. Seller shall be responsible for all Liabilities, costs or charges imposed in connection with the delivery of Net Output up to the Point of Delivery, including line losses and any operation and maintenance charges imposed by the Transmission Owner for the Interconnection Facilities. Buyer shall be responsible for all Liabilities, costs or charges imposed in connection with the scheduling and transmission of Net Output from and beyond the Point of Delivery, except as otherwise provided in Section 6.1.2.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all sales, use, severance, excise, ad valorem, and any other similar taxes imposed or levied by any

Governmental Authority on the generation, sale or delivery of the Net Output up to the Point of Delivery, regardless of whether such taxes are imposed on Buyer or Seller under Applicable Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes levied at and beyond the Point of Delivery upon and after the purchase by Buyer of the Net Output, regardless of whether such taxes are imposed on Buyer or Seller under Applicable Law. Seller shall be responsible for all federal, state and local taxes of whatever kind relating to the construction, ownership, leasing, operation or maintenance of the Facility, the Premises, or any components or appurtenances thereof, and all of Seller's income taxes, including those based upon the sale of the Products. If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, the Party required to pay such taxes shall provide prompt written notice thereof to the Party responsible for such taxes, together with appropriate supporting documentation. The paying Party shall remit such taxes to the relevant Governmental Authority and the responsible Party shall reimburse the paying Party for such taxes. Such reimbursement shall be made by the responsible Party on or before ninety (90) days after (a) such notice and supporting documentation are received, or (b) such taxes are actually paid and proper documentation thereof is furnished, whichever is later. Any Party entitled to an exemption from any such taxes or charges shall furnish the other Party any necessary documentation related thereto. The Parties specifically reserve the right to protest to the appropriate state or political subdivision the amount or validity of any such taxes, whether or not any such action must be filed in the name of Seller, Buyer or both. At the responsible Party's expense, the paying Party shall reasonably cooperate with the responsible Party with any such action.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Applicable Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental attributes.

5.6 Rates Not Subject to Review. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 *et seq.*) or any other Governmental Authority to amend this Agreement, or support a petition by any other Person seeking to amend this Agreement, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2009).

## SECTION 6
## OPERATION AND CONTROL

6.1 Standard of Facility Operation.

6.1.1 General; Operating and Forecast Procedures. Seller shall develop, build, operate, maintain and repair the Facility in all material respects in accordance with: (a) the applicable and mandatory standards, criteria and guidelines of the Transmission Owner and any Electric System Authority; (b) the Permits; (c) the Generation Interconnection Agreement; (d) all Applicable Laws; (e) the requirements of this Agreement; and (f) Good Industry Practices. Buyer and Seller shall cooperate to develop prior to the Commercial Operation Date (i) operating procedures for the scheduling, delivery and receipt of Test Energy and the Products as described hereunder, and (ii) procedures for providing non-binding forecasting of expected Net Output, in each case, in accordance with the requirements of this Agreement.

6.1.2 Fines and Penalties.

(a) Seller shall pay when due all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred by Seller in connection with this Agreement or the Facility or any Applicable Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents, employees, contractors or subcontractors through appropriate proceedings.

(b) If fines, penalties, or legal costs are assessed against or incurred by Buyer on account of any action by any Governmental Authority or the Transmission Owner due to noncompliance by Seller with any Applicable Law, the Generation Interconnection Agreement or the provisions hereof, or if the performance of Seller or Buyer is delayed or stopped by order of any Governmental Authority or the Transmission Owner due to Seller's noncompliance with any Applicable Law, or the Generation Interconnection Agreement, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred by Buyer as a result.

(c) Without limiting the generality of anything in this Section 6.1.2, Seller shall reimburse Buyer for all fees, damages, fines, penalties or legal costs imposed on Buyer by any Governmental Authority or other Person or paid to other utilities for violations to the extent caused by Seller, and likewise Buyer shall reimburse Seller for all fees, damages, fines, penalties or legal costs imposed on Seller by any Governmental Authority or other Person or paid to other utilities for violations to the extent caused by Buyer.

6.2 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at the Point of Delivery, including Interconnection Facilities

defined herein, the costs of any Network Upgrades and the costs of any upgrades for affected systems.

6.3 Coordination with the Transmission Owner. As between the Parties, Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the Transmission Owner. In the event there are unanticipated changes in FERC or any Electric System Authority rules related to the coordination and synchronization of the Facility and the Interconnection Facilities with the Transmission Owner sufficiently significant to change the benefits, risks and burdens held by the Parties under this Agreement, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.4 Outages.

6.4.1 Planned Outages. Commencing with the second ($2^{nd}$) Contract Year, Seller shall provide Buyer with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year. Buyer shall have a period of fifteen (15) calendar days following Seller's delivery of such annual forecast to review and provide Seller with any requested changes in writing. Seller shall promptly update such annual forecast, or otherwise change it, only to the extent that Seller is reasonably required to change it in order to comply with Good Industry Practices, or the terms of any of Seller's or its Affiliates' financing documents. Seller shall not schedule any Planned Outages in the daylight hours during the period starting May $15^{th}$ and ending October $15^{th}$ of each Contract Year, inclusive, that reduce the energy generation capability of the Facility, unless (a) such outage is required to avoid damage to the Facility, (b) such outage is necessary to perform maintenance that is required to maintain equipment warranties, (c) such outage is required in order to comply with Good Industry Practices or the Generation Interconnection Agreement or (d) the Parties agree otherwise in writing.

6.4.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent, acting reasonably). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the decrease in available capacity of the Facility, and the expected completion date and time of the outage. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage, provided that such change has no substantial impact on Seller and is consistent with Good Industry Practices. Seller shall notify Buyer of any subsequent changes in the available capacity of the Facility as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications regarding Maintenance Outages given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its reasonable efforts consistent with Good Industry Practices to minimize the frequency and duration of Maintenance Outages.

6.4.3 Forced Outages. Seller shall promptly provide to Buyer an oral report, via telephone to a number specified by Buyer, of any Forced Outage affecting more than ten percent (10%) of the Actual Capacity of the Facility. This report shall include the amount of the Actual Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. Seller shall take reasonable measures consistent with Good Industry Practices to avoid Forced Outages and to minimize their duration.

6.4.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer via telephone to a number specified by Buyer, of any major limitations, restrictions, deratings, or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than ten percent (10%) of the Actual Capacity of the Facility.

6.5 Buyer Transmission Services. Beginning no later than [March 31], 2023 and continuing throughout the Term, Buyer shall be responsible for arranging and paying for all transmission service required to effectuate the receipt of Test Energy and Net Output at the Point of Delivery. As between Buyer and Seller, Buyer shall bear all responsibility, liability, costs, fees, penalties and any other expenses associated with any failures, errors or omissions solely due to Buyer's performance of such obligations, including the failure to timely perform such obligations in accordance with this Agreement or the requirements of any Electric System Authority. Buyer shall indemnify, hold harmless and reimburse Seller for any liability, costs, fees, penalties and any other expenses assessed against or incurred by Seller that are Buyer's responsibility pursuant to the preceding sentence.

6.6 Increase in Actual Capacity After the Final Completion Date. Seller shall provide Buyer with written notice if Seller or any Affiliate of Seller elects to build an additional solar project in the geographic vicinity of the Facility (such notice a "**ROFR Notice**"), which ROFR Notice shall include information regarding the additional solar project (including but not limited to anticipated capacity and pricing and timing of construction). Buyer may, but shall not be required to, elect to increase its Contract Amount by an amount of MWac up to the maximum capacity of such additional solar project by providing written notice to Seller within [sixty (60)] days of actual receipt of the ROFR Notice. If Buyer elects not to participate in the additional solar project (or otherwise fails to timely respond to the ROFR Notice), then Seller may proceed with construction and selling the resulting output to a third party; provided that Seller shall be required to submit a new ROFR Notice to Buyer in accordance with this Section 6.6 for Buyer's consideration if the price agreed upon with such third party is less than the price offered to Buyer pursuant to the declined ROFR Notice.

6.7 Meteorological Data. Seller shall install sufficient meteorological stations at the Facility to provide the capability of measuring and recording representative irradiance levels and other pertinent meteorological conditions, which meteorological data may be used to calculate Deemed Generated Energy from Curtailments and Deemed Delivered Output.

6.8 Forecasting. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production and the Net Output. These non-binding forecasts of production, described in Subsections 6.8.1 through 6.8.4, will be determined and prepared with the intent of being as

accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

6.8.1 Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term, provide Buyer with a forecast of each month's average-day Net Output from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

6.8.2 Week-Ahead Forecasts. By 1700 EPT on the Thursday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Saturday through Friday).

6.8.3 Day-Ahead Forecasts. By 0700 EPT on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. In the event that Seller has any information to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0700 EPT on the preceding Business Day.

6.8.4 Intra-day Forecasts. In the event that Seller has any information to believe that the production from the Facility during any hour will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance as soon as practical.

6.8.5 Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g., Excel template), which form, template, substance, and manner may be reasonably modified by Buyer from time to time. Requested forecast data may include but is not limited to, location, forecast timestamp, site capacity, a flag for actual or forecasted data, available site capacity, energy, and reason for any capacity reduction for each hour of the next seven days.

6.9 Operational Records and Reports.

6.9.1 Monthly Reports. Within fifteen (15) days after the end of each calendar month during the Term from and after the Commercial Operation Date, Seller shall provide to Buyer a monthly operational report, in electronic format, in a form and substance reasonably acceptable to Buyer containing the following data:

(a) A summary of the energy production of the Facility during such month and the Net Output; and

(b) A summary of any other significant events related to the operation of the Facility for such month.

6.9.2 Other Information to be Provided to Buyer. Seller shall provide to Buyer such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.9.3 Information to Governmental Authorities. Seller shall, as soon as practicable, upon written request from Buyer, assist Buyer by providing Facility data and reports, to the extent available, that are required by Buyer to be provided to any Governmental Authority. In the event that Buyer obtains confidential technical or proprietary information related to the Facility and belonging to a third party, and Buyer is required to provide such information to a Governmental Authority or otherwise required to provide such information under Applicable Law, Seller may, at its expense, seek a protective order or other appropriate remedy to prevent such information from being disclosed to the public, all as further described in Section 24.4, below.

6.10 Production Guarantee.

6.10.1 Guaranteed Production. Seller guarantees that during each Performance Measurement Period during the Term, the Net Output for such Performance Measurement Period and the associated RECs will be no less than eighty-five percent (85%) of the Expected Annual Production for each Contract Year during such Performance Measurement Period (the "**Minimum Production Guarantee**"). In determining the Net Output in any Performance Measurement Period for purposes of compliance with the Minimum Production Guarantee, Deemed Delivered Output and Deemed Generated Energy from Curtailments shall be credited to the calculation of such Net Output.

6.10.2 Liquidated Damages for Failure to Meet Guaranteed Production. If Seller fails to achieve the Minimum Production Guarantee in any Performance Measurement Period, then Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount equal to Buyer's Cost to Cover. Each Party agrees and acknowledges that the damages Buyer would incur due to any failure to achieve the Minimum Production Guarantee would be difficult to predict with certainty and therefore the liquidated damages set forth in this Section 6.10.2 are a fair and reasonable calculation of such damages. Such liquidated damages shall be payable in lieu of actual damages and shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for any failure by Seller to achieve the Minimum Production Guarantee; provided, however, notwithstanding the foregoing, Buyer shall nevertheless have the right to terminate this Agreement as a result of an Event of Default by Seller under Section 11.1.2(f) and seek those related rights and remedies upon such termination.

6.10.3 Annual Output Guarantee Report. On or before the sixtieth (60th) Day following the end of each Performance Measurement Period, Buyer shall deliver to Seller a report (and supporting data) detailing whether Seller achieved the Minimum Production Guarantee for the most recently completed Performance Measurement Period, and, if applicable, calculations of the liquidated damages set forth in Section 6.10.2 that Seller owes for such Performance Measurement Period. Within ten (10) Business Days of providing such invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice or as otherwise determined pursuant to the dispute resolution provisions set forth in Section 23.

6.11 Access Rights. Upon reasonable prior notice, during normal working hours, and subject to the safety requirements of Seller and Applicable Laws relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees and inspectors with

reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) for purposes of implementing Section 10.6, (c) as necessary to witness any acceptance tests, and (d) for other reasonable purposes at the reasonable request of Buyer. Buyer shall indemnify and release Seller against and from any and all Liabilities resulting from actions or omissions by the Buyer Indemnitees in connection with their access to the Premises or the Facility, except to the extent that such damages are caused by the intentional or grossly negligent act or omission of any Seller Indemnitee.

6.12 Signage. If Buyer determines it would be useful for public relations purposes to have a sign at the site identifying the Solar Participants, Seller will provide such signage after review and approval by Buyer.

## SECTION 7
## GENERATOR STATUS

7.1 Authority to Make Sales. From and after the Commercial Operation Date (or, if earlier, the date Seller commences the delivery of the Test Energy), Seller shall maintain its authority to sell Net Output hereunder.

## SECTION 8
## SELLER'S SECURITY AND CREDIT SUPPORT

8.1 Seller Credit Support. Seller shall provide Buyer with and maintain the Seller Credit Support. The Seller Credit Support shall be available to Buyer as security for Seller's payment obligations under this Agreement. The Seller Credit Support shall be maintained at the expense of Seller and shall be, as elected by Seller, in its sole discretion, in the form of Letter of Credit, Cash Deposit, or Guaranty or a combination thereof. Seller may change the form or forms of Seller Credit Support at any time and from time to time upon reasonable prior notice to Buyer. Seller shall be required to replenish the Seller Credit Support if and as it is depleted.

8.1.1 One or More Letters of Credit. If all or a portion of the Seller Credit Support is a Letter of Credit, such Letter of Credit must be issued for a minimum term of three hundred sixty (360) days. Seller shall cause the renewal or extension of such Letter of Credit for additional consecutive terms of three hundred sixty (360) days or more no later than thirty (30) days prior to each expiration date of such Letter of Credit. If such Letter of Credit is not renewed or extended as required herein or replaced by alternate instruments of Seller Credit Support in accordance with this Section 8.1, Buyer shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn in an interest bearing escrow account in accordance with Section 8.1.2, until and unless Seller provides Buyer with a substitute Letter of Credit or other form of Seller Credit Support meeting the requirements of this Section 8.1.

8.1.2 One or More Cash Deposits. Seller Credit Support provided in the form of a Cash Deposit shall include a requirement for immediate notice to Buyer and Seller in the event that the Cash Deposit amounts held as Seller Credit Support do not at any time meet the required level for the Cash Deposit. Cash Deposit funds held in the deposit 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 (3) months or less as may be

specified by Seller, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. At any such times as the balance in the deposit account exceeds the amount of Seller's obligation to provide the Cash Deposit hereunder, Buyer shall remit to Seller on demand any excess in the deposit account above the required level of the Cash Deposit.

8.1.3 One or more Guaranties. Seller may provide one or more Guaranties as Seller Credit Support. If the Guarantor with respect to any Guaranty provided as Seller Credit Support ceases to qualify as a Guarantor, then Seller shall be required to either (a) provide a replacement Guaranty from a qualified Guarantor, or (b) replace the Guaranty provided by the unqualified Guarantor with one or more alternate Seller Credit Support instruments meeting the criteria set forth in this Section 8.1, in each case, no later than ten (10) Business Days after such Guarantor ceases to be a qualified Guarantor.

8.1.4 Credit Support Release. Promptly following the date upon which Seller provides the Subsequent Credit Support (to the extent that the Construction Credit Support is not part of the Subsequent Credit Support) or upon earlier termination of this Agreement and payment of any outstanding Delay Damages, Buydown Liquidated Damages, and any other amounts due to Buyer, Buyer shall release the balance of the Construction Credit Support (including any accumulated interest, if applicable) to Seller. Promptly following the end of the Term or upon earlier termination of this Agreement, and payment of any outstanding amounts due to Buyer, Buyer shall release the balance of the Seller Credit Support (including any accumulated interest, if applicable) to Seller.

8.2 Not an Exclusive Remedy. The security contemplated by this Section 8 shall not be Buyer's exclusive remedy for the Seller's failure to perform its obligations in accordance with this Agreement.

## SECTION 9
## METERING AND COMMUNICATION

9.1 Installation of Metering Equipment. Seller shall be responsible for ensuring that metering equipment is designed, furnished, installed, owned, inspected, tested, calibrated, maintained and replaced as provided in the Generation Interconnection Agreement.

9.2 Metering. Metering shall be performed at the location and in the manner specified in the Generation Interconnection Agreement and as necessary to perform Seller's obligations hereunder.

9.2.1 Revenue Meters. Upon Buyer's reasonable request and no less than once per calendar year, Seller shall inspect and test the Revenue Meter. Buyer may have a representative present during any metering inspection or test. If any of the inspections or tests, whether requested by Buyer or Seller, disclose a variance exceeding one-half of one percent (0.5%), proper correction, based upon the found variance, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding the shorter of (a) the last one-half of the period from the last test to the test that

showed the metering equipment to be in error or (b) three (3) months preceding the test that showed the metering equipment to be in error, in the amount the metering equipment shall have been shown to be in error by such test. The Parties shall use production data from Seller's computer monitoring system for the Facility to determine the amount of such inaccuracy. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered; provided, however, that, no corrections shall be made with respect to any payments that were due more than two (2) years prior to the date of the test or inspection that showed the metering equipment to be in error. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to Buyer having any obligations to Seller, or any other Person, pursuant to or under the Generation Interconnection Agreement.

9.2.2 Communication. Besides the communication equipment required in the Interconnection Agreement between the Seller and its transmission interconnection service provider, the Seller will provide a MEAG Power meter station to include communication equipment to allow MEAG Power to read the meters (primary and backup) in real time from MEAG Power's Supervisory Control and Data Acquisition (SCADA) system and MEAG Power's MV90 metering system in Atlanta, GA. All communication, SCADA and telemetry equipment will be provided by the Seller and will be designed to meet MEAG Power's equipment and data communication requirements which include, but are not limited to: primary revenue quality meter (with Power Quality capabilities), back-up revenue quality meter, two (2) private, redundant communication channels with related technology on both ends in order to deliver data from the facility to MEAG Power's SCADA and MV90 systems in Atlanta, GA, including redundant routers and network equipment designed to communicate real time information to MEAG Power.

## SECTION 10
## BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. No later than the seventh (7th) Business Day after the end of each calendar month, Seller shall deliver to Buyer an invoice detailing Seller's computation of the payment for the Net Output delivered to Buyer and any Deemed Delivered Output during the previous month. Together with the invoice, Seller shall provide detailed computations showing the Net Output that was delivered during each hour and calculations by hour for Deemed Delivered Output. All settlement statements will reflect hours in Central Prevailing Time. If any invoice is found to be inaccurate, a corrected invoice shall be issued. On or before the last day of the month during which the invoice was received, Buyer shall pay Seller the undisputed portion of the invoiced amount for Net Output and for Deemed Delivered Output.

10.2 Offsets. Either Party may offset any undisputed payment due hereunder against amounts owing from the other Party to the offsetting Party pursuant hereto; provided that any offset with respect to an amount attributable to a Solar Participant shall be limited by and subject to the principles in Section 5.2. Offsets shall be documented in a manner mutually acceptable to the Parties, with records retained as otherwise required by this Agreement. A Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder (including any amounts withheld by a Party which are later determined to have been improperly

withheld) shall bear interest at the Contract Interest Rate from the date due until paid, which rate shall not exceed the maximum permissible under Georgia law.

10.4 Disputed Amounts. Notwithstanding anything to the contrary herein, if either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Section 10, such Party shall notify the other Party of the specific basis for the dispute and may, if not previously paid, withhold payment of the amount disputed. Upon resolution of the dispute, any required payment or refund shall be paid within thirty (30) days after such resolution, along with interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment or refund.

10.5 Recordkeeping. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (a) a period of at least two (2) years after the date an invoice was received by a Party, or (b) if there is a dispute relating to an invoice, the date that is at least two (2) years after the date on which such dispute is resolved. Each Party agrees to take such reasonable action as may be requested by the other Party to comply with the record retention requirements imposed by a Governmental Authority or that are otherwise necessary to preserve the tax benefits of this transaction.

10.6 Required Records and Audit Rights. Seller shall maintain, or cause to be maintained, accurate and up-to-date books and records of all matters relating to operations, production, billings and other terms of this Agreement in sufficient detail and format in order that all provisions of this Agreement can be readily and adequately verified. All accounting records shall be maintained in accordance with GAAP consistently applied. All required records shall be available in electronic format. Seller shall also maintain or cause to be maintained, accurate and up-to-date records as may be required by law, Governmental Authorities, and other regulators. Buyer shall have the right, at its sole expense, upon reasonable notice, and during normal business hours, to examine, audit and copy: (i) the records of Seller to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made hereunder; (ii) operating procedures and manuals; (iii) equipment and operating records, and (iv) data and records required to be maintained pursuant this Agreement; provided however that audits shall not be conducted more frequently than once each Contract Year and shall be limited in scope to the fiscal year of the audit as well as the immediately two preceding fiscal years. Seller will support remote audits as requested through transmission of requested items in an electronic format and participation in conference calls and webinars. If, as a result of such examination, any amount is determined to be due by one Party to the other Party, the appropriate Party shall promptly pay the amount of the deficiency so owed, together with interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

10.7 Payment Due Dates.

Except as otherwise specifically provided herein, any payment due from one Party to the other Party pursuant to this Agreement shall be due thirty (30) days after the date of the invoice that the former Party receives from the latter Party for the amount of such payment.

10.8 Rounding. In administering and interpreting this Agreement, all amounts expressed in MWh shall be rounded to the nearest thousandth of a MWh, all amounts expressed in MW shall be rounded to the nearest thousandth of a MW, all rates per MW and rates per MWh amounts expressed in dollars shall be rounded to the nearest hundredth of a dollar, and all total amounts expressed in dollars shall be rounded to the nearest dollar.

## SECTION 11
## DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

11.1.1 Defaults by Either Party.

(a) A Party breaches a representation or warranty made by it herein if such breach materially affects the performance of such Party's obligations under this Agreement and the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a written notice of the default. A breach may only be "cured" by the defaulting party remedying the breach and reimbursing the non-defaulting party for any cost, expense, or liability incurred as a result of such breach (including, but not limited to, any cost or expense incurred investigating and pursuing such breach).

(b) A Party fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in this Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party written notice of the default; *provided, however*, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) days if (i) the failure cannot reasonably be cured within the original thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional ninety (90) day period, and (iii) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently proceeding to cure the failure.

11.1.2 Defaults by Seller.

(a) Seller (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is generally unable to pay its debts when due.

(b) Seller fails to make an undisputed payment when due hereunder (including any liquidated damages or other payments upon default due hereunder) if the failure is not cured within fifteen (15) days after the Buyer gives Seller a written notice of the failure.

(c) Seller sells or transfer the Products to any other Person other than Buyer, except as otherwise permitted under this Agreement and such activity is not cured within ten (10) Business Days after Buyer gives Seller a written notice thereof.

(d) Seller fails to post or maintain Seller Credit Support as required in Section 8 if the failure is not cured within ten (10) Business Days after Buyer gives Seller a written notice of such failure.

(e) Except as provided in Section 20.3, Seller transfers all or substantially all of the assets of the Facility without the prior written consent of Buyer.

(f) If during any two (2) consecutive Performance Measurement Periods, the aggregate quantity of Net Output is less than sixty-five percent (65%) of the aggregate sum of the Expected Annual Production for such period, provided that in determining the Net Output in any Performance Measurement Period, Deemed Delivered Output and Deemed Generated Energy from Curtailments shall be credited to the calculation of such Net Output.

(g) Seller fails to deliver the Environmental Attributes and the Test Energy free and clear of all liens, security interests, claims and encumbrances if the failure is not cured within ten (10) Business Days after Buyer gives Seller a written notice of such failure.

(h) Seller fails to issue notice to its contractor (which contractor shall have been previously disclosed to Buyer) under the engineering, procurement and construction agreement or similar contract entered into by and between Seller and the contractor and relating to the construction of the Facility, authorizing and directing the commencement of construction of the Facility by the Notice to Proceed Date.

11.1.3 Default by Buyer.

(a) Buyer fails to make an undisputed payment when due hereunder and:

(1) If such failure to pay is not attributable to a Defaulting Solar Participant, such failure is not cured within fifteen (15) days after the Seller gives the Buyer a written notice of the failure to pay; or

(2) If such failure to pay is attributable to a Defaulting Solar Participant (a "**DSP Failure**"), at the time of such failure Buyer fails to promptly pursue each of its available remedies under (i) the Defaulting Solar Participant's PPC, including, if necessary, enforcement of the Defaulting Solar Participant's taxing power and (ii) the non-defaulting Solar Participants' PPC obligations to make payments arising from the nonpayment of a Defaulting Solar Participant.

(b) Buyer (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is generally unable to pay its debts when due.

11.2 Termination and Remedies.

11.2.1 Buyer's Remedies. Upon the occurrence of an Event of Default by Seller (excluding any Event of Default arising out of any event or circumstance for which an exclusive remedy is expressly provided under this Agreement), the Buyer shall be entitled to all remedies available under this Agreement or at law or in equity, and may terminate this Agreement by notice to Seller designating the date of termination (provided such notice must be delivered to the Seller to the notice addresses of the Seller set forth in Section 22.1 no less than fifteen (15) Business Days before such termination date). Such notice shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein that the notice is a notice of termination of this Agreement. In the event of a termination hereof, and without prejudice to any other remedies available to Buyer under this Agreement or at law or in equity (except as to remedies which are liquidated as hereafter provided in Section 11.2.1(c), below):

(a) Seller shall pay to Buyer all amounts due to Buyer hereunder for all periods prior to termination, subject to offset by either Party against amounts due from the other Party for periods prior to such termination.

(b) The amounts due pursuant to Section 11.2.1(a) shall be paid within sixty (60) days after receipt of invoice for such charges, or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable, and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(c) The Buyer shall be entitled to receive a Termination Payment as liquidated damages for all amounts owing under this Agreement for the balance of the Term. The Termination Payment shall be calculated by the Buyer within a reasonable period after termination of this Agreement. Amounts owed pursuant to this Section 11.2.1(c) shall be due within sixty (60) days after the Buyer gives the Seller notice of the amount due or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable. Subject to Section 11.3, the Buyer shall under no circumstances be required to account for or otherwise credit or pay the Seller for economic benefits accruing to the Buyer as a result of the Seller's default, except to the extent such benefits are contemplated in the definition of Termination Payment.

(d) In the exercise of any remedy under this Section 11.2.1, Buyer shall be entitled to recover from Seller, to the extent permitted by Georgia law, all

reasonable attorneys' fees and expenses incurred by Buyer in connection with the exercise of such remedies.

11.2.2 Seller's Remedies.

(a) Upon the occurrence of an Event of Default by Buyer under Section 11.1.1, Section 11.1.3(a)(1) or Section 11.1.3(b), Seller shall be entitled to all remedies available under this Agreement or at law or in equity, and may terminate this Agreement by notice to Buyer designating the date of termination (provided such notice must be delivered to Buyer to the notice addresses of the Buyer set forth in Section 22.1 no less than fifteen (15) Business Days before such termination date). Such notice shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein that the notice is a notice of termination of this Agreement. In the event of a termination hereof, and without prejudice to any other remedies available to Seller under this Agreement or at law or in equity (except as to remedies which are liquidated as hereafter provided in Section 11.2.2(a)(3), below):

(1) Buyer shall pay to Seller all amounts due to Seller hereunder for all periods prior to termination, subject to offset by either Party against amounts due from the other Party for periods prior to such termination.

(2) The amounts due pursuant to Section 11.2.2(a)(1) shall be paid within sixty (60) days after receipt of invoice for such charges, or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable, and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(3) The Seller shall be entitled to receive a Termination Payment as liquidated damages for all amounts owing under this Agreement for the balance of the Term. The Termination Payment shall be calculated by the Seller within a reasonable period after termination of this Agreement. Amounts owed pursuant to this Section 11.2.2(a)(3) shall be due within sixty (60) days after the Seller gives the Buyer notice of the amount due or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable. Subject to Section 11.3, the Seller shall under no circumstances be required to account for or otherwise credit or pay the Buyer for economic benefits accruing to the Seller as a result of the Buyer's default, except to the extent such benefits are contemplated in the definition of Termination Payment.

(4) In the exercise of any remedy under this Section 11.2.2(a), Seller shall be entitled to recover from Buyer, to the extent permitted by Georgia law, all reasonable attorneys' fees and expenses incurred by Seller in connection with the exercise of such remedies.

(b) Upon the occurrence of an Event of Default that is attributable to a DSP Failure, if Buyer is not, at any time, using its reasonable best efforts to pursue its available remedies against (i) the Defaulting Solar Participant pursuant to the terms of the Defaulting Solar Participant's PPC and (ii) the non-defaulting Solar Participants pursuant to the terms of their respective PPCs, then Seller may bring any suit, action or proceeding in law or in equity, including mandamus, injunction and action for specific performance as may be necessary or appropriate to cause Buyer to enforce such remedies (including but not limited to enforcement of the Defaulting Solar Participant's taxing power) until such DSP Failure is cured, and to the extent permitted by Georgia law, Seller may recover from Buyer all reasonable attorneys' fees and expenses incurred by Seller in connection with the exercise of Seller's remedy under this Section 11.2.2(b). Buyer shall periodically apprise Seller of steps taken by Buyer to pursue its remedies pursuant to clauses (i) and (ii) of the immediately preceding sentence. If any amount that is attributable to a DSP Failure remains unpaid to Seller 12 months following the month of the initial Event of Default attributable to the DSP Failure, then Seller shall have the right to terminate this Agreement with respect to the portion of the Contract Amount attributable to the Defaulting Solar Participant.

11.2.3 Notwithstanding any termination or expiration of this Agreement, this Agreement will remain in effect with respect to, and to the extent necessary to facilitate the settlement of, all liabilities and obligations arising hereunder before the effective date of such termination or expiration, and as necessary to facilitate any Termination Payment.

11.2.4 The Parties agree to pursue the remedies available hereunder in such manner as reasonably required to permit the continued performance of the remaining obligations.

11.3 Duty 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 hereof.

11.4 Security. Buyer may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Seller Credit Support held by Buyer in whatever form to reduce any undisputed amounts that Seller owes Buyer arising from a Seller Event of Default.

11.5 Cumulative Remedies. Except with respect to events or circumstances for which an exclusive remedy is provided herein, the rights and remedies provided to each Party hereunder are cumulative and not exclusive of any rights or remedies of such Party.

## SECTION 12
## INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Applicable Law, Seller shall release, indemnify and hold harmless Buyer, its Affiliates and members, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnitees**") against and from any and all losses, fines, penalties, claims, demands, damages,

liabilities, actions or suits of any nature whatsoever (including reasonable legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) in each case as are claimed by third parties (collectively, "**Liabilities**") resulting from, or arising out of, or in any way connected with, Seller's breach of the performance of its obligations hereunder, gross negligence, willful misconduct, fraud, or violation of Applicable Law, for or on account of personal injury, illness, death or property damage, excepting only to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Buyer Indemnitee.

12.1.2 Indemnity by Buyer. To the extent permitted by Applicable Law, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Seller Indemnitees**") against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, Buyer's breach of the performance of its obligations hereunder, gross negligence, willful misconduct, fraud, or violation of Applicable Law, for or on account of personal injury, illness, death or property damage, excepting only to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Seller Indemnitee.

12.1.3 Defense. 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 Section 12 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 designated by such indemnifying Party and 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.

12.1.4 Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; *provided however*, 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.

12.1.5 Third Parties. Except as provided in this Section 12.1 and as is consistent to preserve the Financing Parties' rights in any Financing Party Consent or Estoppel, nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall affect the status of Buyer or Seller as an independent entity.

12.2 Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES OR TERMINATION PAYMENT PAYABLE HEREUNDER OR INDEMNIFICATION FOR THIRD PARTY DAMAGES HEREUNDER OR FOR LIABILITY ARISING FROM FRAUD, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR

PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

## SECTION 13
## INSURANCE

13.1 Evidence of Insurance. On or before the Notice to Proceed Date and continuing through achievement of Commercial Operation, Seller shall acquire, or cause to be acquired, Builder's Risk insurance coverage as required by Exhibit 2. On or before the beginning of each Contract Year, Seller shall acquire, or cause to be acquired, all other insurance required by Exhibit 2. In connection with all insurance coverage required to be carried by Seller hereunder, Seller shall provide Buyer, upon Buyer's prior written request, with certificates of insurance evidencing that insurance coverages for the Facility are in compliance with the applicable specifications for such insurance coverage set forth in Exhibit 2. Such insurance policies shall (a) provide Buyer with additional insured status (except worker's compensation/employer's liability); and (b) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, trustees, directors, agents, subcontractors, and employees. If the insurer does not agree to provide Buyer thirty (30) days' prior written notice of non-renewal, cancellation of corresponding policies (except that such notice shall be ten (10) days for non-payment of premiums), Seller shall be obligated to provide such notice to Buyer. All insurance policies shall be written with insurers rated A-VIII or better by A.M. Best Company. All insurance policies shall be written on an occurrence or claims-made basis. All insurance policies, except the Umbrella/Excess Liability policy, shall contain an endorsement or otherwise provide that Seller's policy shall be primary in all instances regardless of like coverage, if any, carried by Buyer. Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein. The Umbrella/Excess Liability policy shall be non-contributory.

13.2 Term and Modification of Insurance. If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to Buyer, accompanied by a certificate from an independent insurance advisor, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured and Buyer shall not unreasonably withhold its consent to such modification.

## SECTION 14
## FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not within the reasonable control of the Party affected by the event, (b) is not the result of such Party's negligence or failure to act, and (c) could not be overcome, avoided or mitigated by the affected Party's use of due diligence under the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; natural disasters; fire; severe weather; storms; lightning; tsunami; peril of the sea; war (declared or undeclared); military or guerilla action; banditry; terrorist activity or a threat of

terrorist activity which, under the circumstances, would be considered a precursor to actual terrorist activity; economic sanction or embargo; pandemic, epidemic or quarantine; civil disturbance; sabotage; action, inaction or restraint by court order or public or Governmental Authority. Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase, the Products at a more advantageous price than is provided hereunder; (ii)(a) the unavailability, variability or lack of photovoltaic rays or solar insolation, or (b) Facility equipment failures, in each case, except to the extent caused by an independent event of Force Majeure; or (iii) economic hardship, including lack of money.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure (other than the obligation to pay amounts due hereunder), provided that:

14.2.1 the Party affected by the Force Majeure shall give the other Party prompt written notice, without intentional delay, describing the particulars of the event;

14.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

14.2.3 the affected Party shall use reasonable and diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Obligations Already Incurred. No obligations, including payment obligations, of either Party that arose before the event of Force Majeure or that arise after the cessation of the event of Force Majeure shall be excused by the event of Force Majeure. In the event of an event of Force Majeure with respect to Buyer, Seller may sell all or a portion of the Products to any other Person during the continuation of such event of Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from performing its material obligations hereunder for a period exceeding three hundred sixty-five (365) consecutive days, then either Party may terminate this Agreement by giving ten (10) days' prior written notice to the other Party, provided that if the Party claiming to be affected by the Force Majeure event is diligently taking reasonable efforts to remedy the effects of the Force Majeure event, then the Party claiming the Force Majeure event shall have such additional time (not to exceed six (6) additional months) as reasonably necessary to remedy its inability to perform. Upon such termination, each Party shall pay to the other all amounts due the other hereunder for all periods prior to the date of termination, but neither Party will have any liability to the other Party (a) as a result of such termination or (b) with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect with respect to, and to the extent necessary to, facilitate the settlement of, all liabilities and obligations arising hereunder before the effective date of such termination.

14.6 Change in Law. In the event of an enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a Governmental Authority of any Applicable Law after the Effective Date that impairs or prevents either Party's performance of its material obligations under this Agreement, materially increases a Party's costs to perform its material obligations under this Agreement, or materially alters the allocation of risks between the Parties (a "**Change in Law**"), the Parties shall use good faith efforts to negotiate and agree on modifications to this Agreement in a manner that preserves the respective economic benefits and risk allocation of the Parties under this Agreement as of the Effective Date; *provided, however*, that neither Party shall be obligated to accept or agree to any modifications to this Agreement, nor shall any Party be bound to take any action or perform any obligation unless such action or obligation has been mutually agreed upon by the Parties.

## SECTION 15
## SEVERAL OBLIGATIONS

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties or any Solar Participant.

## SECTION 16
## CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Georgia, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

## SECTION 17
## PARTIAL INVALIDITY

The Parties do not intend to violate any Applicable Law governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal, unenforceable, or void as being contrary to any Applicable Law or public policy, all other terms hereof shall remain in effect. The Parties shall use good faith efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Applicable Law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## SECTION 18
## NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure, whether of a like kind or different nature.

## SECTION 19
## AUTHORIZATIONS

During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, and ownership of the Facility and for the sale and delivery of the Net Output, except Permits with respect to which the failure to maintain would not materially adversely affect Seller's ability to perform its obligations hereunder.

## SECTION 20
## SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in contravention of this Section 20 will be void.

20.2 Binding Nature. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

20.3 Permitted Assignments by Seller. Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, Seller may, without the consent of Buyer, assign this Agreement to a Financing Party for collateral security purposes in connection with any financing or refinancing of the Facility, and in connection therewith, Buyer agrees to (i) execute a reasonable Financing Party Consent or Estoppel in a form reasonably acceptable to Buyer should the Financing Party request such consent, (ii) reasonably cooperate in a timely manner with the requests of Seller or Financing Parties in conjunction with any financing involving the Facility, including any due diligence efforts of any such Financing Parties, and (iii) deliver reasonable and customary legal opinions, if required, in connection with any Financing Party Consent or Estoppel that is entered into with or for a Financing Party. If Seller seeks Buyer's consent to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of Seller, such proposed transferee (together with the proposed transferee's Affiliates) must at the time of assignment, (x) either (A) collectively own, manage, or operate solar or wind energy electricity generating assets (not including the Facility) with a nameplate capacity of not less than 200 MW in the aggregate or (B) have engaged (or will have engaged in connection with such assignment) a Person to manage the construction of the Facility (if such transfer occurs before the Commercial Operation Date) or the operation of the Facility (if such transfer occurs after the Commercial Operation Date) that, together with its Affiliates, collectively owns, manages, or operates solar or wind energy electricity generating assets with a nameplate capacity of not less than 200 MW in the aggregate; (y) have an Acceptable Credit Rating or a credit rating at least equal to that of the assignor; and (z) have posted Credit Support in accordance with this Agreement. In connection with any permitted assignment by Seller and approved by Buyer pursuant to the immediately preceding sentence, Buyer will execute a consent and agreement to such assignment and a written full release of Seller from all of its duties and obligations under this Agreement in a form reasonably acceptable to the Parties.

20.4 Permitted Assignments by Buyer. Notwithstanding Section 20.1, Buyer may, upon Seller's written consent (such consent not to be unreasonably withheld, conditioned or delayed) assign a portion of its rights and obligations under this Agreement to a Person (including a joint action agency) with whom Buyer may be working for the supply of prepaid gas or electricity. To the extent this Agreement is novatable pursuant to the supply agreements between such Person and the prepaid gas or electricity seller, and to the extent Buyer wishes to novate this agreement, Buyer will deliver a written request for such assignment, which request will include a proposed assignment agreement. Subject to the consent required by the first sentence of this Section 20.4, Seller agrees to (i) comply with the prepaid-gas or electricity seller's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of the appropriate parties involved with Buyer's supply of prepaid gas or electricity.

## SECTION 21
## ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

## SECTION 22
## NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile, electronic mail, or other written documentary form. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

| | |
|---|---|
| To Seller: | PINEVIEW SOLAR LLC<br>Attn: General Counsel<br>685 S. Arthur Ave., Suite 1B<br>Louisville, CO 80027 |
| with a copy to | PINEVIEW SOLAR LLC<br>Attn: Alexander Zhou<br>685 S. Arthur Ave., Suite 1B<br>Louisville, CO 80027 |

| | |
|---|---|
| To Buyer: | MEAG Power<br>Attn: Senior VP and Chief Operating Officer<br>1470 Riveredge Parkway, NW<br>Atlanta, GA 30328-4640 |
| with a copy (which shall not constitute notice) to: | MEAG Power<br>Attn: Senior VP and General Counsel<br>1470 Riveredge Parkway, NW<br>Atlanta, GA 30328-4640 |

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section 22.

22.3 Notices to Financing Parties. The requirements concerning notice by Buyer to Financing Parties will be set forth in the Financing Party Consent or Estoppel, if any.

## SECTION 23
## DISPUTE RESOLUTION

23.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly in accordance with this Section 23.1. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within fifteen (15) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter.

23.2 Choice of Forum. Any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement must be brought in the Superior Court of Fulton County in the State of Georgia. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of such court in any such proceeding, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceedings brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and I agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

23.3 Settlement Discussions. No statements of position or offers of settlement made in the course of the negotiation process described in Section 23.1 may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

23.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## SECTION 24
## CONFIDENTIALITY

24.1 Confidential Information; Press Releases. The Parties hereby agree to keep confidential, and shall not disclose (including by means of press release or other public announcement), the terms of this Agreement, any information relating to the business, strategy, policies, prospects, assets or plans of the other Party or any of the other Party's Affiliates (including, in the case of Buyer as the receiving Party, Facility capabilities and availability and other information contained in monthly and quarterly reports provided hereunder) and, to the extent marked in writing as confidential at the time of disclosure, all other information provided by the Parties to one another pursuant to this Agreement (collectively, "Confidential Information"). Confidential Information shall not include (i) information that is or becomes available to the public through no breach of this Agreement, (ii) information that was previously known by the receiving Party without any obligation to hold it in confidence, (iii) information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, (iv) information that the receiving Party develops independently without using the Confidential Information, and (v) information that the providing Party approves for release in writing. Buyer and Seller hereby agree that the Parties will coordinate and mutually agree upon the content and timing of press releases, public announcements, marketing materials, and branding materials concerning this Agreement or the subject matter of this Agreement. Notwithstanding the foregoing, the other Party's prior written approval shall not be required nor prevent the Parties from releasing information (a) which is required to be disclosed in order to obtain Permits and other approvals relating to the Facility or other information required to be provided to regulators having jurisdiction over a Party's business or that of its Affiliates, (b) as necessary to fulfill such Party's obligations under this Agreement, or (c) as otherwise required by Applicable Law.

24.2 Treatment of Confidential Information. Notwithstanding the foregoing, each Party may provide any Confidential Information: (i) to a Governmental Authority or any other Person (including contractors, consultants, accountants, financial advisors, agents, experts, legal counsel and other professional advisors to the Parties) as required for billing or otherwise to perform its obligations under or administer this Agreement; and (ii) in the case of Seller, to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders

for, and potential purchasers and purchasers of, direct or indirect interests in the Facility or Seller and to any credit rating agency that has issued a Credit Rating for Seller or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever, except as permitted hereunder. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

24.3 Disclosure Required by Law. Notwithstanding the foregoing, a receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by Applicable Law, but (to the extent reasonably possible under Applicable Law) only after providing written notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall (to the extent permitted under Applicable Law) reasonably cooperate in connection with the providing Party's efforts to obtain such protective order or other relief. In no event shall a receiving Party be required to provide such a written notice to the providing Party when making a required disclosure in any litigation where the Parties are adverse litigants. Further, each Party shall use commercially reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Law and there is an opportunity to maintain the confidentiality of the Confidential Information under the Applicable Law, and shall promptly notify the providing Party of any attempt by any Person to obtain the Confidential Information through legal process or otherwise under Applicable Law. In addition, to the extent either Party requires additional details or other information from the other Party in order to comply with Applicable Law and such additional details or other information is in such other Party's possession or reasonably available to such other Party, such other Party shall promptly provide such additional details or other information to the first Party upon request therefor from the first Party to such other Party.

24.4 Georgia Open Records Act and Georgia Open Meeting Act.

24.4.1 Notwithstanding any other provision of this Section 24 or this Agreement, the Parties recognize Buyer and the Solar Participants are governmental entities subject to certain statutory, legal obligations as a public body, including, without limitation, the Georgia Open Records Act (O.C.G.A. §50-18-70, *et seq.*) ("**GORA**") and Georgia Open Meeting Act (O.C.G.A. § 50-14-1, *et seq.*) ("**GOMA**"). The obligations and requirements of Buyer under GORA and GOMA shall be harmonized to the extent feasible with this section, provided that GORA and GOMA, as interpreted by Georgia courts, shall control. Upon receipt of a request for Confidential Information and prior to the release of any Confidential Information by Buyer pursuant to GORA or GOMA, Buyer will provide written notice to Seller of such request as set forth in Section 24.3, above, along with the information or records which Buyer has identified as responsive which may contain Confidential Information. If Seller should object to the production of any Confidential Information by Buyer under GORA or GOMA, Seller must timely notify Buyer of its objection. Buyer shall make an independent determination as to whether Confidential Information is required to be disclosed pursuant to GORA and GOMA. Seller may, if Seller disagrees with Buyer's determination, institute an action in its own name to prevent or otherwise limit such disclosure.

Each Party agrees to bear their own costs, including legal fees, in complying with this Section 24.4.

24.4.2 Upon Buyer's receipt of a Solar Participant's written notification (a "**Written Notification**"), in accordance with the terms of such Solar Participant's PPC, that such Solar Participant has received a request for a copy of this Agreement pursuant to GORA, Buyer shall use commercially reasonable efforts to promptly notify Seller of such GORA Request. Notwithstanding anything to the contrary in this Agreement, a Solar Participant's failure to provide the Written Notification and/or Buyer's failure to notify Seller upon receipt of a Written Notification (i) shall not constitute a default pursuant to Section 11.1, hereof and shall not give rise to any of the Seller remedies referenced in Section 11.2.2, hereof and (ii) Buyer shall have no recourse against the Solar Participant or Buyer.

24.5 Survival. The obligations of the Parties under this Section 24 will remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## SECTION 25
## COUNTERPARTS; ORIGINALS

This Agreement may be executed by facsimile or PDF (electronic copy), in one or more duplicate counterparts, and when executed and delivered (electronically or manually) by all the parties listed below, shall each be deemed an original and, taken together, shall constitute a single binding agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

**SELLER:**

**PINEVIEW SOLAR LLC**

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

**BUYER:**

**MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA**

By:_____
Name: James E. Fuller
Title: CEO and President

## EXHIBIT A

## DESCRIPTION OF FACILITY AND POINT OF DELIVERY

The Facility shall consist of a solar photovoltaic (PV) inverter-based generator array with a nominal net capacity of 80 $MW_{AC}$ at the Point of Delivery, which Point of Delivery will be the 115 kV bus at MEAG Power's Pitts 230/115 kV Substation. The Facility site is located approximately at GPS coordinates Latitude 32.004384, Longitude –83.544910, in Wilcox County, Georgia.

**EXHIBIT B**

**EXPECTED ANNUAL PRODUCTION for**

**Contract Amount from Facility**

| Contract Year | MWh (80 MWac) |
|---|---|
| 1 | 196,149 |
| 2 | 195,168 |
| 3 | 194,192 |
| 4 | 193,221 |
| 5 | 192,255 |
| 6 | 191,294 |
| 7 | 190,338 |
| 8 | 189,386 |
| 9 | 188,439 |
| 10 | 187,497 |
| 11 | 186,559 |
| 12 | 185,626 |
| 13 | 184,698 |
| 14 | 183,775 |
| 15 | 182,856 |
| 16 | 181,942 |
| 17 | 181,032 |
| 18 | 180,127 |
| 19 | 179,226 |
| 20 | 178,330 |

## EXHIBIT C

## NERC EVENT TYPES

| Event Type | **Description of Outages** |
|---|---|
| U1 | Unplanned (Forced) Outage—Immediate – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms. |
| U2 | Unplanned (Forced) Outage—Delayed – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service. |
| U3 | Unplanned (Forced) Outage—Postponed – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service. |
| SF | Startup Failure – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs. |
| MO | Maintenance Outage – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.) |
| ME | Maintenance Outage Extension – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO. |
| PO | Planned Outage – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.) |
| PE | Planned Outage Extension – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO. |

## EXHIBIT D

## EXAMPLE CALCULATION OF BUYER'S COST TO COVER

Assume that during a Performance Measurement Period the Expected Annual Production is 175,000 MWh; however, during the Performance Measurement Period the actual Net Output was 125,000 MWh, representing only 71.43% of the Expected Annual Production.

Also assume that several Involuntary Curtailments were mandated by the Transmission Owner (or its transmission operator) within the Performance Measurement Period. The Seller determines that the Net Output that would have been produced by the Facility but that was not produced by the Facility due to such Involuntary Curtailments amounts to 350 MWh. This determination was based on the Expected Annual Production, Facility availability information, relevant weather conditions, and solar insolation at the Facility and other pertinent data for the relevant period.

Finally, assume that there were no Buyer Initiated Curtailments during the Performance Measurement Period, therefore, the Deemed Delivered Output is 0 MWh.

Because the actual Contract Amount of Net Output for such Performance Measurement Period and the associated RECs are less than Minimum Production Guarantee of 85%, Seller is to pay to Buyer liquidated damages in an amount equal to Buyer's Cost to Cover.

Buyer's Cost to Cover is calculated as follows:

(Replacement Cost $/MWh – Contract Price $/MWh) * ((85%* Expected Annual Production MWh) – (actual Net Output + Involuntary Curtailments MWh + Buyer Initiated Curtailments MWh))

Where,
Replacement Cost = The average of the market price that MEAG Power posts for its Participants for all hours ending 900 through hours ending 1700 in the Performance Measurement Period, plus MEAG's actual price paid for RECs to replace RECs not delivered by Seller, all on a $/MWh basis. For this example, assume MEAG's average posted market price for the hours HE900 through HE1700 for the Performance Measurement Period is $30.00/MWh, and MEAG's actual cost of replacement RECs for the Performance Measurement Period is $2.00/MWh.

Then,
Buyer's Cost to Cover = ($32.00- $25.91) * ((85%* 175,000.00) – (125,000 + 350 + 0))
= ($6.09) * (148,750 – 125,350)
= $142,506.00

**EXHIBIT E**

**FORM OF LETTER OF CREDIT**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.

Issued: November ___, 2020

Beneficiary:
Municipal Electric Authority of Georgia
1470 Riveredge Pkwy
Atlanta, GA 30328

Applicant:
[NAME]

Initial expiration date at our counter (unless evergreen):

Final expiration date at our counter:

For overnight delivery:

Ladies and Gentlemen:

We, [**] ("Issuer") do hereby issue this Irrevocable Transferable Standby Letter of Credit No. by order of and for the account of [NAME] ("Account Party") and in favor of Municipal Electric Authority of Georgia ("Beneficiary" or "You"), in connection with that certain Power Purchase Agreement dated _____, 2021, by and between Account Party and You (as amended, modified and supplemented from time to time, the "Agreement"). The term "Beneficiary" includes any successor by operation of law of the named beneficiary including without limitation any liquidator, receiver or conservator. Capitalized terms used herein but not defined shall have the meaning given such terms in the Agreement.

This Letter of Credit is issued, presentable and payable and we guaranty to you that drafts under and in compliance with the terms of this Letter of Credit will be honored on presentation and surrender of certain documents pursuant to the terms of this Letter of Credit.

This Letter of Credit is available in one or more drafts and may be drawn hereunder, in part or in full, for the account of up to an aggregate amount not exceeding _____. This Letter of Credit is drawn against by presentation to us at our office located at [**, Attention: **], of a drawing

certificate: (i) signed by an officer or authorized agent of the Beneficiary; (ii) dated the date of presentation; and (iii) the following statement:

"The undersigned hereby certifies to [**] ("Issuer"), with reference to its Irrevocable Transferable Standby Letter of Credit No., dated , issued on behalf of [NAME] ("Account Party") and in favor of Municipal Electric Authority of Georgia ("Beneficiary") that (i) the Account Party failed to furnish a replacement or extension letter of credit (or other substitute credit support) thirty (30) days prior to the final expiration date of the Letter of Credit; (ii) the Account Party failed to furnish a replacement letter of credit (or other substitute credit support) within thirty (30) days after the Issuer notified us that it elected not to consider the letter of credit extended for one (1) year; (iii) the Issuer no longer qualifies as a Qualified Issuer; or (iv) an Event of Default with respect to the Account Party has occurred under the Agreement. Based upon the foregoing and in accordance with the terms of Section 8 of the Agreement, the Beneficiary hereby draws upon the Letter of Credit in an amount equal to $ (United States Dollars )."

If presentation of any drawing certificate is made on a Business Day and such presentation is made on or before 10:00 a.m. Eastern Time, Issuer shall satisfy such drawing request on the same Business Day. If the drawing certificate is received after 10:00 a.m. Eastern Time, Issuer will satisfy such drawing request on the next Business Day. As used herein, "Business Day" means any day on which (a) commercial banks are not closed, or authorized or required to close, in New York City, New York and (b) with respect to certain drawing request, the bank to which funds are requested to be transferred hereunder as set forth in such drawing certificate is not closed, or authorized or required to close, and may receive such funds by wire transfer as requested hereunder.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one (1) year from the initial expiration date hereof, or any future expiration date subject to the final expiration date hereof, unless at least one hundred twenty (120) days prior to any expiration date we send you written notice at the above address by registered mail or overnight courier service that we elect not to consider this Letter of Credit extended for any such period.

However, in no event shall this Letter of Credit be extended beyond the final expiration date.

This Letter of Credit may be transferred in its entirety (but not in part) upon presentation to us of a transfer certificate signed by the Beneficiary in the form of Exhibit A accompanied by this Letter of Credit and any amendment(s), in which the Beneficiary irrevocably transfers to such transferee all of its rights hereunder, whereupon we agree to either issue a substitute letter of credit to such successor or endorse such transfer on the reverse of this Letter of Credit. Any transfer fees assessed by Issuer will be payable solely by Account Party, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

This Letter of Credit is not transferable to any person or any entity with which U.S. persons are prohibited from doing business under applicable U.S. law or regulation.

Disbursements under the Letter of Credit shall be in accordance with the following terms and conditions:

1. The amount, which may be drawn by the Beneficiary under this Letter of Credit, may be reinstated by the amount of any drawings hereunder via amendment.

2. All commissions and charges will be borne by the Account Party.

3. This Letter of Credit shall be governed by the International Standby Practices Publication No. 590 of the International Chamber of Commerce (the "ISP"), except to the extent that terms hereof are inconsistent with the provisions of the ISP, in which case the terms of the Letter of Credit shall govern. This Letter of Credit shall be governed by the internal laws of the State of New York to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such New York laws, the ISP shall control.

4. This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.

5. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary or an authorized agent of the Beneficiary shall have signed a written waiver.

No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver. Partial drawing permitted.

6. A failure to make any partial drawing at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit.

7. All payments hereunder shall be made free and clear of, and without deduction or set off for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature and by whomsoever imposed.

Exhibit A

(FORM TO BE ADDRESSED TO THE NOMINATED BANK BY THE BENEFICIARY OF A TRANSFERABLE CREDIT WHEN TRANSFERRING THE CREDIT IN ITS ENTIRETY INCLUDING ALL EXISTING AND FUTURE AMENDMENTS, IF ANY)

_____

To: .....

Gentlemen:

Re: Letter of Credit No.
Issued by: [**]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

_____
(Name of Transferee)

_____
(Address)

all rights of the undersigned beneficiary to Draw under the above Letter of Credit In its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it direct to the transferee with your customary notice of transfer.

Very truly yours,

Signature of
Beneficiary

SIGNATURE AUTHENTICATED &
SIGNOR IS AUTHORIZED TO REQUEST SAID TRANSFER

_____
(Bank)

_____
(Authorized Signature)

**EXHIBIT F**

**FORM OF SELLER GUARANTY**

This Guaranty is executed and delivered as of this _____ Day of _____, 20____ by _____, a _____ [corporation] ("Guarantor"), in favor of [_____] ("Buyer"), in connection with the performance by [_____] ("Seller"), of a Power Purchase Agreement dated [____] between Seller and Buyer (the "PPA").

- RECITALS –

A. Seller is planning to develop, design, construct, own, and operate a solar power electric generation facility expected name plate capacity of approximately [_____] MW to be located in [_____] (the "Facility").

B. Seller and Buyer have entered into the PPA for the purchase and sale of electrical energy and associated Environmental Benefits (as defined in the PPA) from the Facility on the terms and conditions set forth therein.

[Seller is controlled by Guarantor.] Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Buyer. To induce Buyer to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

– AGREEMENT –

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Buyer the due, prompt, and complete observance, performance, and discharge of all amounts payable by Seller under the PPA when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination, upon acceleration or otherwise, and whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). The obligations of Guarantor under this Guaranty are primary obligations for which Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. This is a guaranty of payment, not of collection and shall apply regardless of whether recovery of all such Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Seller or its assets. Buyer shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to ($US_____), plus costs of collection with respect to any valid claim(s) made by Buyer hereunder that are incurred in the enforcement or protection of the rights of Buyer.

3. Guaranty Absolute. The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

(a) any defect or deficiency, or other unenforceable provision, in the PPA or any other documents executed in connection with the PPA;

(b) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Buyer to exercise, in whole or in part, any right or remedy held by Buyer with respect to the PPA, including but not limited to those rights set forth in Section 4 of this Guaranty; or

(c) any change in the existence, structure or ownership of Guarantor or Seller, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Seller or its assets.

4. Rights of Buyer. Guarantor hereby grants to Buyer, in Buyer's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to enter into any amendments, supplements or modifications to the PPA;

(c) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(d) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

5. Performance. If any of the Obligations are not performed according to the tenor thereof ("Default"), Guarantor shall within five (5) days of receipt of written demand by Buyer (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Buyer against any liabilities, damages, and related costs (including attorneys' fees) incurred by Buyer as a result thereof, all in such manner and at such times as Buyer may reasonably direct.

6. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to such Default that was satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been

automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

7. Guarantor shall be subrogated to all rights of Buyer against Seller in respect of any amounts paid by Guarantor pursuant to this Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of Buyer against Seller or any collateral which Buyer now has or acquires, until all of the Obligations shall have been irrevocably paid to Buyer in full.

8. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Buyer.

9. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 5 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by applicable laws;

(b) any right to require Buyer to proceed against Seller or any other person, or to require Buyer first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Buyer;

(d) any duty of Buyer to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Buyer to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Buyer, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances;

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Buyer; and

(h) all defenses based on suretyship, including any defense arising from a matter waived under this Guaranty.

Notwithstanding the foregoing or anything else herein, Guarantor does not waive and shall be entitled to assert any defenses, claims or other rights that are available to Seller (other than bankruptcy or insolvency) and all limitations of liability under the PPA shall also apply to this Guaranty.

10. Cumulative Remedies. The rights and remedies of Buyer hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Buyer may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Buyer need not join Seller in any action against Guarantor to preserve its rights set forth herein.

11. Representations and Warranties. Guarantor represents and warrants to Buyer as follows:

(a) Guarantor is a [corporation,] duly organized, validly existing, and in good standing under the laws of the state of its incorporation. [Seller is a direct or indirect wholly-owned subsidiary of Guarantor.] Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

12. Collection Costs. Guarantor hereby agrees to pay to Buyer, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Buyer may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Buyer in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Buyer of its rights and remedies hereunder.

13. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

14. Waiver or Amendment. No provision of this Guaranty or right of Buyer hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Buyer. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Buyer.

15. Successors and Assigns. Guarantor shall not assign its rights or obligations under this Guaranty without the prior written consent of Buyer, and any assignment without such prior written consent shall be null and void and of no force or effect. This Guaranty shall inure to the benefit of and bind the successors and permitted assigns of Buyer and Guarantor.

16. Entire Agreement. This Guaranty reflects the whole and entire agreement of the parties and supersedes all prior agreements related to the subject matter hereof.

17. Governing Law. The interpretation and performance of this Guaranty and each of its provisions shall be governed and construed in accordance with the laws of the State of California. The parties hereby submit to the exclusive jurisdiction of the courts of the State of California, and venue is hereby stipulated as San Francisco, California.

18. Termination. Guarantor may terminate this Guaranty by providing written notice of such termination to Buyer; provided, however, that such termination by Guarantor shall not be effective unless and until Guarantor has provided replacement Seller Credit Support (as defined in the PPA) in accordance with Article 8 of the PPA. No such termination shall affect Guarantor's liability with respect to any Obligations incurred under the PPA prior to the time the termination is effective, which liabilities remain guaranteed pursuant to the terms of this Guaranty.

19. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Buyer as provided in the PPA

(b) If to Guarantor _____
_____
_____
Attn:
Phone:_____

With a copy to: _____
_____
_____
Attn:
Phone:_____

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative as of the day and year first above written.

**[Guarantor]**

By: _____
Name:
Title:

## EXHIBIT 1

## QUARTERLY/MONTHLY REPORTS

Each quarterly/monthly report shall include the following items:

1. Cover page.
2. Brief description of the Facility.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility.
5. Table showing critical path schedule of major items and activities.
6. Summary of major activities in the preceding quarter/month.
7. Forecast of major activities scheduled for the current quarter/month.
8. Forecast of Commercial Operation Date.

## EXHIBIT 2

## REQUIRED INSURANCE

| Type of Insurance | Minimum Limits of Coverage |
|---|---|
| **Commercial General Liability and Excess or Umbrella policies combined limits.** | $11,000,000 each occurrence and $11,000,000 general aggregate |

Commercial General Liability ("CGL") insurance shall cover liability arising from premises, operations, products/completed operations, bodily injury and property damage, personal injury and advertising injury, sudden and accidental pollution, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. Sudden and accidental pollution coverage may be placed separately with limits equal to the combined policy limited noted above.

Buyer shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella or excess insurance. The commercial umbrella or excess insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employer's Liability insurance.

The CGL and commercial umbrella or excess insurance to be obtained by or on behalf of Seller shall be endorsed or shall otherwise provide as follows:

The CGL insurance as afforded by this policy for the benefit of Buyer shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by Buyer shall be excess of and noncontributing with insurance afforded by this policy. Commercial umbrella or excess insurance shall be non-contributory.

Seller shall not be required to have the above mentioned liability insurance coverages until the Commercial Operation Date.

| | |
|---|---|
| **Business Automobile Liability** | $1,000,000 each accident, including all Owned (if any), Non-Owned, Hired and Leased Autos Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. |
| **Workers Compensation** | Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan. |
| **Employers Liability** | $1,000,000 bodily injury by accident - each accident;<br>$1,000,000 bodily injury by disease - each employee;<br>$1,000,000 bodily injury by disease-policy limit. |

| | |
|---|---|
| **Builder's Risk** | No later than the date construction begins, Builder's Risk insurance, or an installation floater, shall be written on an "all risk" basis and include earthquake, flood, collapse, hot testing and debris removal. Coverage shall be written on a replacement cost basis for physical damage with reasonable sublimits. The Policy Limits will be based upon Maximum Foreseeable Loss (MFL) which is supported by an engineering assessment or an amount no less than 75% of the hard costs of the Facility. |
| **All-Risk Property insurance** | Beginning on the Commercial Operations Date, All-Risk Property insurance on a replacement costs bases including coverage for: (i) fire, flood, wind storm, tornado and earthquake and (ii) Machinery Breakdown insurance; all subject to reasonable sublimits. The Policy Limits will be based upon Maximum Foreseeable Loss which is supported by an engineering assessment or an amount no less than 75% of the hard costs of the Facility. |
| **Business Interruption insurance** | Amount required to cover Seller's continuing expenses resulting from full interruption for a period of twelve (12) calendar months.<br><br>Business Interruption insurance shall cover loss of revenues attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by Buyer, subject to a reasonable deductible which shall be the responsibility of Seller. Notwithstanding any other provision of this Agreement, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date. |

EXHIBIT B

**FORM OF AUTHORIZING RESOLUTION OF SOLAR PARTICIPANT**

**RESOLUTION OF THE [GOVERNING BODY] OF THE [SOLAR PARTICIPANT] APPROVING AND AUTHORIZING THE EXECUTION OF A POWER PURCHASE CONTRACT BETWEEN THE SOLAR PARTICIPANT AND THE MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, THE PLEDGE OF THE FULL FAITH AND CREDIT OF THE SOLAR PARTICIPANT TO SECURE ITS PAYMENT OBLIGATIONS THEREUNDER, AND FOR SUCH OTHER PURPOSES.**

**WHEREAS**, pursuant to the Municipal Electric Authority Act (the "**Act**"), the [Solar Participant] (the "**Solar Participant**") has previously entered into one or more Power Sales Contracts (each, as amended, a "**Power Sales Contract**") with the Municipal Electric Authority of Georgia (the "**Authority**") for provision of the Solar Participant's bulk electric power supply needs by the Authority from defined projection projects and sources; and

**WHEREAS**, under one such Power Sales Contract, the Project One Power Sales Contract (the "**Project One Power Sales Contract**"), the Authority further agreed to provide or cause to be provided additional power needs of the Solar Participant in excess of its entitlement to power supplied under the Project One Power Sales Contract ("**Supplemental Power**"); and

**WHEREAS**, the Project One Power Sales Contract provides that the Solar Participant may elect to procure an alternate source of Supplemental Power other than that provided by the Authority from the output of an Authority project; and

**WHEREAS**, the Authority adopted a Supplemental Power Policy (the "**Supplemental Power Policy**") under which the Solar Participant and the Authority may make elections regarding provision and procurement of Supplemental Power; and

**WHEREAS**, the Solar Participant has determined that, in order to meet the growing and diverse energy needs of its customers, it has need for an additional type of economical, reliable source of electric power and energy beyond that provided from the sources available resources of the Authority under the Project One Power Sales Contract and other contracts between the City and the Authority; and

**WHEREAS**, the Authority has informed the Solar Participant that the Authority has an opportunity to procure a substantial amount of Supplemental Power for a multi-year term through a Power Purchase Agreement with Pineview Solar LLC (the "**Company**") for the output and services of approximately 80 MWac from a photovoltaic solar energy generation facility located in Wilcox County, Georgia (the "**Facility**") to be constructed, owned, operated, and maintained by the Company (such agreement, the "**Supplemental Power Purchase Agreement**" or "**SPPA**"); and

**WHEREAS**, in accordance with the Supplemental Power Policy, the Solar Participant has requested that the Authority purchase from the Company power, output and services of the Facility to cause to be provided to the City its Supplemental Power; and

**WHEREAS**, the Authority has agreed to cause to be provided the Solar Participant's Supplemental Power from the power, output and services of the Facility pursuant to the terms of a Power Purchase Contract (the "**PPC**") in substantially the form attached as Exhibit A hereto; and

**WHEREAS**, the Solar Participant finds, and the Solar Participant and the Authority agree that the PPC is supplemental to, and is authorized by, the Project One Power Sales Contract and that the Products (as defined in the SPPA) constitute Supplemental Power as defined in the Supplemental Power Policy; and

**WHEREAS**, the Solar Participant determines that the Solar Participant's payment obligations for Supplemental Power under the PPC authorized thereby shall constitute the general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant is pledged, obligating the Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due thereunder; and

**WHEREAS**, the [Governing Body] desires to approve the PPC; to authorize the execution and delivery of the PPC and other such documents, certificates, and opinions described therein; and authorize such further actions as necessary for the Solar Participant to procure Supplemental Power as provided thereby.

**NOW, THEREFORE, BE IT RESOLVED** by the [Governing Body] of the Solar Participant as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated in the body of this Resolution.

2. Findings and Determinations. All findings and determinations contained in the PPC, including the recitals thereto, are hereby incorporated herein by reference, and are hereby adopted as findings and determinations of the [Governing Body] of the Solar Participant.

3. Defined Terms. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the PPC.

4. Supplemental Power Purchase Agreement. The [Governing Body] of the Solar Participant acknowledges receipt of the form of the SPPA to be executed by the Authority and Company.

5. Authorization to Execute PPC. The [Governing Body] of the Solar Participant hereby authorizes the Solar Participant to enter, as a Solar Participant (defined therein) into the PPC in substantially the form attached as Exhibit A hereto, and to perform the same, and the [Title of Officer] of the Solar Participant is hereby authorized on behalf of the Solar Participant to execute and deliver the PPC. The [Title of Officer], with the advice of Counsel to the Solar Participant, is authorized to agree to such changes to the PPC as may be necessary prior to execution thereof, and the execution and delivery of the PPC shall be conclusive evidence of such approval. The [Title of Officer] of the Solar Participant is authorized to attest the execution by the [Title of Officer] of the PPC and to affix the seal of the Solar Participant to such documents.

6. Further Authority. The [Governing Body] hereby authorizes, empowers and directs the [_____] and any necessary representatives of the Solar Participant to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions and intent of this Resolution and the PPC.

7. Authorized Representative. The [Title of Officer] and [Title of Officer] of the Solar Participant are each hereby each designated as Authorized Representatives of the Solar Participant, and may execute notices, certificates, requests, estimates and other documents contemplated by the PPC, subject to the limitations contained herein.

8. Repeal of Conflicting Resolutions. All resolutions and parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

9. Effective Date. This Resolution (including the recitals first above written, which are hereby incorporated into this Resolution) shall take effect immediately upon its adoption; a copy of this Resolution may be filed in such offices as the undersigned or such development authority may elect to file this Resolution. All resolutions, or parts of resolutions, in conflict herewith are repealed.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**DULY ADOPTED** at a meeting of the [Governing Body] of the Solar Participant, held this _____ day of _____ 2021.

**Solar Participant**

By:_____
Name:_____
Title:_____

ATTEST:

By:_____
Name:_____
Title:_____

[SEAL]

# EXHIBIT A

# FORM OF PPC

[FORM ATTACHED]

## CERTIFICATE OF CLERK

The undersigned, being the duly appointed, qualified, and acting Clerk of the [Governing Body] of the Solar Participant, **DOES HEREBY CERTIFY** that the foregoing pages of typewritten matter constitute a true and correct copy of a resolution adopted on _____, 2021, by the [Governing Body] of the Solar Participant in a meeting duly called and assembled, after due and reasonable public notice was given in accordance with the procedures of the Solar Participant and with the applicable provisions of law, which was open to the public and at which a quorum was present and acting throughout, and that the original of such resolution appears of public record in the minute books of the [Governing Body] of the Solar Participant, which are in my custody and control.

I do hereby further certify that all members of the [Governing Body] were present at said meeting except the following members who were absent:

_____

and that the resolution was duly adopted by the following vote:

The following voted "Aye": _____

_____;

The following voted "Nay": _____

_____;

The following Did Not Vote: _____

_____.

**WITNESS** my hand and the official seal of the [Solar Participant], this ____ day of _____, 2021.

_____
Clerk

[SEAL]

EXHIBIT C

**FORM OF OPINION OF COUNSEL TO SOLAR PARTICIPANT**

**[TO BE REPRINTED ON LETTERHEAD OF SOLAR PARTICIPANT'S COUNSEL]**

_____, 2021

Municipal Electric Authority of Georgia
Atlanta, Georgia

[Solar Participant]
[Address], Georgia

Seyfarth Shaw LLP
Atlanta, Georgia

RE: Power Purchase Contract between the Municipal Electric Authority of Georgia and [Solar Participant]

Ladies and Gentlemen:

[I/We] have acted as Counsel to [Solar Participant] (the "**Solar Participant**") preliminary to and in connection with the authorization and execution of the above-captioned Power Purchase Contract, dated as of _____, 2021 (the "**PPC**"), between the Municipal Electric Authority of Georgia (the "**Authority**") and the Solar Participant. In so acting, we have examined such documents and matters of law as we have considered desirable to render the opinions hereinafter expressed, including but not limited to the following:

(a) The Constitution of the State of Georgia of 1983, particularly Article IX, Section III, Paragraph I(a) thereof and various acts of the General Assembly of Georgia relating to the Solar Participant;

(b) The PPC;

(c) The Project One Power Sales Contract;

(d) The validation certificate provided pursuant to the order issued by the Superior Court of Fulton County in *State of Georgia v. Municipal Elec. Auth. of Georgia et al.* Civil Action File No. 2018CV37032 (Fulton Co. Sup. Ct. July 17, 2018);

(e) Minutes of the meeting of the [Governing Body] of the Solar Participant held on _____, 2021, authorizing at such meeting the execution of the PPC by the Solar Participant; and

(f) Such other documentation and matters of law as [I/we] have deemed necessary.

Whenever [I/we] have stated that [I/we] have assumed any matter, it is intended to indicate that we have assumed such matter without making any factual, legal or other inquiry or investigation, and without expressing any opinion or conclusion of any kind, concerning such matter. [I/we] assume no issue of unconstitutionality or invalidity of a relevant law unless a reported case has so held.

Reference is made to the opinion dated the date hereof of Seyfarth Shaw LLP, Atlanta, Georgia, as counsel to the Authority, upon which [I/we] have relied, with your permission, with respect to all matters related to the validity and enforceability of the Supplemental Power Purchase Agreement (the "**SPPA**") between the Authority and RE Sumter LLC and the security pledged thereunder. [I/we] have reviewed sufficient information to assume that the Project One Power Sales Contract between the Solar Participant and the Authority has been judicially confirmed and validated by order of the Superior Court of Fulton County, Georgia. [I/we] have further assumed, in reliance upon the opinion of Seyfarth Shaw LLP, that the Authority has all requisite power and authority to enter into and perform its obligations under the SPPA, and that the SPPA is a valid and binding agreement, enforceable against the Authority in accordance with its terms.

Based upon the foregoing, it is [my/our] opinion that:

1. The PPC has been duly and validly authorized, executed and delivered by the Solar Participant and the provisions thereof which obligate the Solar Participant are legal, valid and binding obligations of the Solar Participant enforceable in accordance with the terms thereof. Under the terms of the PPC, the Solar Participant is obligated to levy a tax, at a rate sufficient, as described in the PPC, on all property in the Solar Participant's jurisdiction subject to such tax, to the extent necessary to generate sufficient revenue to pay its obligations under the PPC.

2. To the best of [my/our] knowledge and belief after reasonable inquiry, the PPC and the performance of the Solar Participant's obligations thereunder will not conflict with or be in violation of any applicable federal, state, or local law or ordinance or, to the best of [my/our] knowledge and belief, be in violation of, or constitute a default under, any agreement or instrument to which the Solar Participant is party or by which the Solar Participant is bound.

3. Each [officer/official] of the Solar Participant who executed the PPC was on the date of the execution thereof, and is on the date hereof, the duly, elected or appointed qualified incumbent of his or her office.

4. The notices given prior to each meeting of the Solar Participant at which any action was taken relating to the PPC and the security therefor comply with the applicable notice requirements of Georgia law, and said meetings were conducted in accordance with all other applicable requirements of Georgia law.

5. There is no action, suit, proceeding, inquiry or investigation, at law or equity, by or before any court or public board or body pending or, to the best of [my/our] knowledge and belief, after making due inquiry with respect thereto, threatened against or affecting the Solar Participant, nor to [my/our] knowledge is there any basis therefore, which in any way questions the creation

or existence of the Solar Participant or the powers of the Solar Participant, or which might result in a material adverse change in the condition (financial or otherwise), business or affairs of the Solar Participant or wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the PPC or any other agreement or instrument to which the Solar Participant is a party and which is used or contemplated for use in connection with the consummation of the transactions contemplated by the PPC or which in any way would adversely affect the levy or collection of taxes by the Solar Participant to fulfill its obligations pursuant to the PPC.

6. All consents, approvals or authorizations, if any, of any governmental authority or agency or other person required on the part of the Solar Participant in connection with the approval of the PPC, the execution and delivery of the same and the consummation of the transactions contemplated thereby have been obtained, and the Solar Participant has complied with any applicable provisions of law requiring any designation, declaration, filing, registration and/or qualification of the Solar Participant with any governmental authority or agency or other person in connection with such execution, delivery and consummation.

The foregoing opinions are qualified to the extent that the enforceability of the PPC might be limited by (i) bankruptcy, fraudulent transfer, moratorium, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights, (ii) limitations imposed by general principles of equity upon specific enforcement, injunctive relief or other equitable remedies, (iii) the exercise of judicial discretion in appropriate cases and (iv) to the following qualifications:

(a) [I/We] express no opinion as to the validity or enforceability of any of the following provisions that may be contained therein: (i) any provisions which purport to waive any defense, counterclaim, set off or deduction arising from any violation of applicable federal or state securities or usury laws, any fraud on the part of any other party, any failure to give notice of a disposition of collateral to the extent required under applicable law, any disposition of collateral other than in a commercially reasonable manner, or the effect of any applicable statute of limitation, (ii) any choice of law provisions therein, (iii) any provisions which purport to waive the right to trial by jury or purport to consent to or waive any objection to the jurisdiction or venue of any particular court, and (iv) any provisions which provide for payment of interest on unpaid interest or which, due to prepayment, acceleration, or otherwise, would cause the rate of interest to exceed five percent (5.0%) per month. [I/We] also note that any provisions requiring any party to pay the attorneys' fees of any other party may be subject to compliance with applicable legal requirements and limitations and that the provisions thereof may be subject to the effect of the provisions of law regarding mutual departures from strict contractual terms. Nothing in this paragraph (a) is intended to limit any of the other qualifications or exceptions to [my/our] opinions set forth in this letter.

(b) Enforcement of any warranties and indemnities contained therein may be limited by applicable federal or state securities laws as violations of public policy and may be limited to the extent such indemnities would require any party to indemnify another party for costs, losses, liabilities, claims, damages or expenses incurred by or asserted against such party as a result of action or inaction of such party constituting negligence. In

addition, it is possible that a court would not enforce any warranties or indemnities with respect to environmental matters contained therein.

(c) With respect to the enforceability thereof, [I/we] have assumed that, to the extent that applicable law would require the rights and remedies set forth therein to be exercised in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability thereof, the persons having remedial rights thereunder will observe and satisfy such legal requirements.

The undersigned's engagement as Counsel to the Solar Participant imposed no duty upon the undersigned to undertake any due diligence investigation as to either: (i) the adequacy of the security for the PPC, (ii) the business or financial condition of the Solar Participant, or (iii) the veracity of any representations or certification made by the [Solar Participant] on which [I/we] have relied. No opinion is expressed as to the federal or state tax-exempt status of the obligations or the interest thereon, or the applicability of the federal securities laws or the Blue Sky laws of any state with respect to the PPC.

The opinions set forth herein are limited to the laws of the State of Georgia and applicable federal laws. The opinions represent [my/our] legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion and is not a guarantee of a result.

This opinion letter is rendered as of its date, and [I/we] express no opinion as to circumstances or events that may occur subsequent to such date. Further [I/we] undertake no, and hereby disclaim any, obligation to advise you, or any other person permitted to rely hereon, of any change in applicable law or relevant facts or any new development which might affect any matters or opinions set forth herein.

This opinion letter is given solely for the benefit of the addressees and their successors and assigns. This opinion letter is not intended to be employed in any transaction other than the one described above and is being delivered to the addressees with the understanding that it may not be published, quoted, relied on or referred to by, and copies may not be delivered or made available to, in whole in or part, any other person or entity (other than the addressees' counsel or any applicable rating agency) or used for any other purpose with the express prior written consent of this firm in each instance.

Very truly yours,

R060512

# RESOLUTION

## A RESOLUTION OF THE NEWTON COUNTY BOARD OF COMMISSIONERS APPROVING A LOCAL OPTION SALES TAX CERTIFICATE OF DISTRIBUTION

**WHEREAS,** the laws of the State of Georgia provide for a Local Option Sales Tax under that Act of the Georgia General Assembly, effective January 1, 1980, relating to Local Sales & Use Taxes, O.C.G.A. § 48-8-80 *et seq.* (the "Act");

**WHEREAS,** the General Assembly, by O.C.G.A. § 48-8-81, created a Special Tax District coterminous with Newton County (the "District") in which the voters may approve the levy of such Local Option Sales Tax;

**WHEREAS,** Newton County and the political subdivisions within the District deemed "Qualifying Municipalities" under the Act elected to implement a Local Option Sales Tax as provided, and the voters of the District approved such a tax;

**WHEREAS,** the Act provides that the governing authorities for the Qualifying Municipalities and the County within the District shall negotiate the distribution of revenues from the Local Option Sales Tax and submit a Certificate of Distribution to the Georgia Commissioner of Revenue according to the guidelines and procedures set forth in O.C.G.A. § 48-8-89;

**WHEREAS,** the County and Qualifying Municipalities adopted the current Certificate of Distribution on December 20, 2002;

**WHEREAS,** O.C.G.A. § 48-8-89(d)(1) provides that the Certificate of Distribution shall expire on December 31 of the second year following the year in which the decennial census is conducted;

**WHEREAS,** the current Certificate of Distribution will expire December 31, 2012;

**WHEREAS,** in accordance with the procedures specified in O.C.G.A. § 48-8-89(d), the County commenced renegotiation proceedings on May 8, 2012; and

**WHEREAS,** during the renegotiation process, the County and Qualifying Municipalities agreed to a Certificate of Distribution.

**NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners of Newton County, Georgia as follows:

1. The Certificate of Distribution contained in Exhibit "A", attached hereto and incorporated herein by reference, is hereby approved.
2. The Chairman of the Board of Commissioners is authorized to execute the Certificate of Distribution on behalf of the Board of Commissioners.

3. All resolutions, or parts of resolutions, in conflict herewith are repealed.

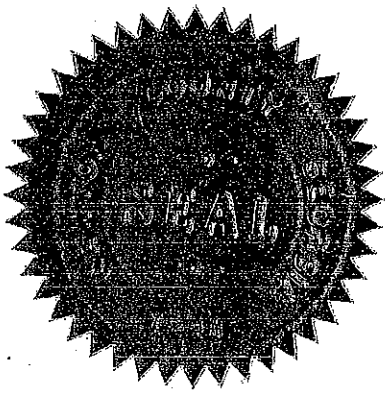
This the 5th day of June, 2012.

NEWTON COUNTY, GEORGIA

By: _____
Kathryn G. Morgan, Chairman

ATTEST:

_____
Jackie Smith, Clerk



## CERTIFICATE OF DISTRIBUTION

TO: State Revenue Commissioner

Pursuant to an Act of the Georgia General Assembly, effective January 1, 1980, relating to Local Sales & Use Taxes, the governing authorities for the qualifying municipalities and the county located within the special district coterminous with the boundaries of NEWTON County hereby certify that the proceeds of the combination city/county local sales and use tax generated in such district shall be distributed by the State Revenue Commissioner as follows:

| | | | |
|---|---|---|---|
| City of | COVINGTON | shall receive | 18.47 % |
| City of | OXFORD | shall receive | 3.02 % |
| City of | PORTERDALE | shall receive | 2.05 % |
| City of | NEWBORN | shall receive | 0.83 % |
| City of | MANSFIELD | shall receive | 0.63 % |
| County of | NEWTON | shall receive | 75.00 % |

This certificate shall continue in effect until such time as a new certificate shall be executed as provided in said Act.

By executing this schedule the county and cities, acting through their respective officers, represent that all municipalities lying wholly or partly in the tax jurisdiction have been given an opportunity to show that they are 'qualified municipalities,' as that term is used in the Act, and that all municipalities listed herein as recipients are 'qualified' and so may receive distribution from the proceeds of the tax.

Executed on behalf of the governing authorities of the qualifying municipalities representing not less than a majority of the aggregate population of all qualifying municipalities located within the special district and the governing authority of the county, this 29th day of June 2012

MAYOR OF THE CITY OF Covington

MAYOR OF THE CITY OF Oxford

MAYOR OF THE CITY OF Porterdale

MAYOR OF THE CITY OF Newborn

MAYOR OF THE CITY OF Mansfield

CHAIRMAN BOARD OF COMMISSIONERS OF Newton

Newton COUNTY

SDS Consultants, LLC
217 West 8th Street / P.O. Box 1099
Rincon, GA 31326
Phone: (912) 659-1694 / Fax: (912)826-5936

J. Raymond Dickey, Attorney

Wesley M. Corbitt, Accountant and Analyst

June 18, 2021

City of Porterdale, Georgia
% Frank Etheridge, City Manager
P.O. Box 667
Porterdale, Georgia 30070

Dear Mayor and Council,

SDS Consultants, LLC, appreciates the opportunity to serve the City of Newton County, Georgia, as your Service Delivery Strategy Consultants. The partners, Wesley M. Corbitt and J. Raymond Dickey, bring knowledge, experience, and success to prepare you for the best possible results in future service delivery strategy and LOST negotiations.

Partner Wesley M. Corbitt, has over 20,000 hours of government audit and financial statement analysis and preparation experience in his previous CPA practice of 25 years, with an additional six years of experience in the financial and administrative management of a local government. Mr. Corbitt has provided GMA's members with SDS instruction for preparing and negotiating successful service delivery strategies and resolving financial inequities and has provided thousands of hours of service delivery analysis and mediation support for multiple cities.

Partner J. Raymond Dickey, Attorney at Law, has represented Georgia cities and Georgia counties for over twenty-five (25) years providing legal representation in all aspects of government. Mr. Dickey's experience includes representations involving litigation in the areas of service delivery strategy (SDS), special purpose local option sales tax (SPLOST), impact fees, and local option sales tax (LOST) for multiple cities. Mr. Dickey has extensive experience and knowledge of the laws governing the SDS Act, LOST, SPLOST and Impact Fees. . Also, Mr. Dickey has extensive experience in the mediation process unique to service delivery strategy (SDS), special purpose local option sales tax (SPLOST) and local option sales tax (LOST).

Below we have defined the initial services that we will provide to the City of Newton County, Georgia, in order to prepare the cities to inter into LOST negotiation with the Commission of Newton County.

State law does not specify a formula for distributing LOST proceeds. Instead, it outlines eight factors (criteria) that can be used by local governments in negotiating the LOST distribution. According to O.C.G.A. §48-8-89, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the eight criteria listed in the law. SDS consultants will provide an analysis of the 5 criteria listed below using the available data and resources defined in this engagement letter.

Criteria 1. Service Delivery Responsibilities to Population served: "...population served during normal business hours...inherent value to a community of a central business district...and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county. The following available data will be applied to the analysis of this criteria:

- Resident population
- Special Events population
- Nighttime populations
- Daytime population
    - Employment, traffic counts & commuting patterns- DOT and commercial and industrial digest
- Central Business district
    - Commercial and Industrial digest and tax exempt property

Criteria 2. Service Delivery Responsibilities to Resident Population: "...the resident population of the subdivision.

- Population
- Population Growth

Criteria 3. Existing Service Delivery Responsibilities: General services provided, LOST benefit per resident and cost per resident for general services net of LOST.

- General fund expenditures
- Tax digest

Criteria 5. The Point of Sale and Use which generates the tax to be apportioned:

- Retail Spending – We will provide an estimate of retail sales and spending and spending gaps based on third party sales information where available. We will use Georgia Southern University, Center for Business Analytics and Economic Research (CBAER) to provide much of the data generation for retail sales and spending and the spending gap between the county and the cities for this analysis.

Criteria 7. The use by any political subdivision of property taxes...from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision:

- Review of most recent SSD agreement and county audited financial statements and identify the cost of county services that primarily benefit the unincorporated residents but are funded with county wide taxes.
- Identify transfers and loans that may not comply with the SDS agreement and legislative intent of SDS Act.
- Provide appropriate arguments and other data to support primary benefit determinations.
- Determine the LOST and property taxes funding used to provide unincorporated services
- Determine non-enumerated revenues used to fund unincorporated services.
- Provide a recommended equity percentage adjustment for this criterion.

In addition to the above analysis, we will review the current SDS Agreement (DCA Summary of Services and Funding) and provide a written analysis with our recommended changes, corrections and additions. We will review the intergovernmental agreements that may materially impact the service delivery agreement, note any conflicts with the SDS act, and provide recommended corrections. This added review of the current SDS agreement will provide the cites support in addressing criteria 6 & 8 though not a focus of this engagement.

We will meet with the City Councils, or their designees, to thoroughly review our report, recommendations and arguments in support of our conclusions.

We would like to begin our services on or before August 1, 2021 and would work to complete the services in this contract and provide our draft report and recommendations by December 1, 2021. Once this engagement agreement is authorized below, we will provide a list of documents and contacts needed to begin our services. Our estimated fee for these services listed will be $33,600 based on our hourly rates plus any travel cost we may incur in the performance of this engagement:

Wesley Corbitt $150.00 per hour Raymond Dickey 225.00 per hour

The Cities contract with this engagement agree to the following payment scheduled:

- $11,200 due upon execution of this agreement
- $11,200 due upon the delivery of the draft documents
- The remaining balance not expected to exceed $11,200, plus travel cost incurred to perform this engagement, will be due with the final report.

Any consulting support services for negotiation, mediation or legal representation beyond the analysis and report provided with this engagement will be at your request and billed at our hourly rates above.

If you agree with the services and fees as outlined above, please sign two copies of this engagement letter. Retain one copy for your records and return one to: SDS Consultants, LLC; P.O. Box 1099, Rincon, Georgia 31326 with the initial payment. You may also email a signed copy to wcorbittconsulting@gmail.com.

SDS Consultants, LLC - Contractor

Wesley M. Corbitt

Partner's Name (Print)

Wesley M. Corbitt

Partner's Signature

**Contracting Cities:**

City of Covington, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature

City of Newborn, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature

City of Mansfield, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature

City of Oxford, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature

City of Social Circle, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature

City of Porterdale, Georgia

_____

Mayor's Name (Print)

_____

Mayor's Signature


## STANDARD PROFESSIONAL SERVICES AGREEMENT

This STANDARD PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this_____ day of _____, 2018, by and between Bureau Veritas North America, Inc., (herein called "BVNA"), and the **City of Oxford** (herein called "Client").

### RECITALS

WHEREAS, the Client desires that BVNA provide independent professional services for Client under the terms of a Standard Professional Services Agreement;

WHEREAS, BVNA represents that it is a professional independent consulting firm and is willing and able to perform such services upon terms and conditions hereinafter set forth;

WHEREAS, all services will be conducted in accordance with these terms and conditions and the agreed upon Scope of Services and Fee Schedule the forms of which are attached as Attachments "A" and "B" respectively.

NOW, THEREFORE, in consideration of the foregoing and of the benefits to each of the parties accruing, the parties hereto do mutually agree as follows:

### AGREEMENT

1. **Scope of Services.** During the term of this Agreement, Client may call upon BVNA to perform specific work from the scope to be defined per project in accordance with the agreed upon fees. Individual projects may be delineated via a specific proposal in accordance with the terms and conditions set forth in this Agreement. BVNA agrees to furnish services in conformity with the terms hereof and the following documents which are incorporated by reference and made a part hereof. No subsequent amendment to this Agreement shall be binding on either BVNA or Client unless reduced to writing and signed by an authorized Representative of BVNA and Client. Any pre-printed forms including, but not limited to: purchase orders, shipping instructions, or sales acknowledgment forms of either party containing terms or conditions at variance with or in addition to those set forth herein shall not in any event be deemed to modify or vary the terms of this Standard Professional Services Agreement.

2. **Term.** This Agreement shall remain in effect from the effective date of the Agreement unless terminated by written notice to the other party at least thirty (30) days prior to termination. Fees may be adjusted annually.

3. **Compensation.** Client shall pay, and BVNA shall accept in full consideration for the performance of the Services, the sum of the reimbursable costs submitted per proposal in accordance with the agreed upon fee schedule per project.

4. **Terms of Payment.** BVNA shall invoice Client and Client shall pay to BVNA for its consulting services as follows:

(a) Fees and all other charges will be billed to Client monthly.

(b) Fees shall be paid by Client within thirty (30) days of being invoiced by BVNA. If the invoice is not paid within such period, Client shall be liable to BVNA for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen (18) percent per annum or the maximum rate allowed by law.

(c) If Client fails to pay any invoice fully within thirty (30) days after invoice date, BVNA may, at any time, and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of services immediately following written notice from BVNA to Client. Notwithstanding any such termination of services, Client shall pay BVNA for all services rendered by BVNA up to the date of termination of services plus all interest, termination costs and expenses incurred by BVNA. Client shall reimburse BVNA for all costs and expenses of collection, including reasonable attorney's fees.

5. **Responsibilities of Client.** Client shall, at such times as may be reasonably required by BVNA for the successful and continuous prosecution of the services set forth in Attachment A (referred to as "Services"), do the following:

(a) Where the performance of the Services require BVNA's presence on the Client's premises, provide adequate space on or in the immediate vicinity of where the Services are to be performed ("Site") to accommodate BVNA's needs;

(b) Provide and maintain suitable access to the Site for BVNA's personnel, equipment and materials;

(c) Supply permits and licenses required to be taken out in Client's name which are necessary to the completion of the Services;

(d) Appoint an individual hereafter referred to as "Client's Project Manager" who shall be authorized to act on behalf of Client and with whom BVNA may consult at reasonable times.

6. **Ownership of Documents.** All plans, studies, documents and other writings prepared by BVNA, its officers, Employees, agents and subcontractors in the course of implementing this Agreement shall remain the property of BVNA. The Client acknowledges that all intellectual property rights related to the performance of the Agreement, including but not limited to the names, service marks, trademarks, inventions, logos and copyrights of BVNA and its affiliates, (collectively, the "**Rights**") are and shall remain the sole property of BVNA or its affiliates and shall not be used by the Client, except solely to the extent that the Client obtains the prior written approval of BVNA and then only in the manner prescribed by BVNA. If BVNA terminates the Agreement in accordance with the provisions of Article 19 below, any such license granted by BVNA to the Client shall automatically terminate.

7. **Use of Data or Services.** BVNA shall not be responsible for any loss, liability, damage, expense or cost arising from any use of BVNA's analyses, reports, certifications, advice or reliance upon BVNA's services, which is contrary to, or inconsistent with, or beyond the provisions and purposes set forth therein or included in these Terms and Conditions. Client understands and agrees that BVNA's analyses, reports, certifications and services shall be and remain the property of BVNA and shall be used solely by the Client, and only the Client is allowed to rely on such work product. If the Client re-uses or modifies or a third party relies on the services, analyses, reports or certifications without BVNA's written permission, then Client agrees to defend and indemnify BVNA from any claims or actions that are brought and any costs, damages, expenses or liabilities, including reasonable attorneys' fees, arising out of or related to such reliance or such re-use or modification. The Client recognizes that data, documents, or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, any electronic documents provided to the Client are for informational purposes only and are not intended as an end-product. BVNA makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against BVNA and BVNA's Consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents.

8. **Relationship of Parties.** BVNA is an independent contractor, and nothing contained herein shall be construed as constituting any other relationship with Client, nor shall it be construed as creating any relationship whatsoever between Client and BVNA's employees. BVNA shall not be entitled, under this contract or otherwise, to any of the benefits under any employee benefit plan which Client or its affiliates or subsidiaries presently has in effect or may put into effect; nor will BVNA be considered an employee for purposes of any tax or contribution levied by any federal, state or local government. BVNA has sole authority and responsibility to hire, fire and otherwise control its employees, and neither BVNA nor any of its employees are employees of Client. BVNA agrees to comply with laws, rules, regulations and ordinances applicable to it as an employer.

9. **Standard of Care. BVNA REPRESENTS THAT THE SERVICES, FINDINGS, RECOMMENDATIONS AND/OR ADVICE PROVIDED TO CLIENT WILL BE PREPARED, PERFORMED, AND RENDERED IN ACCORDANCE WITH PROCEDURES, PROTOCOLS AND PRACTICES ORDINARILY EXERCISED BY PROFESSIONALS IN BVNA'S PROFESSION FOR USE IN SIMILAR ASSIGNMENTS, AND PREPARED UNDER SIMILAR CONDITIONS AT THE SAME TIME AND LOCALITY. CLIENT ACKNOWLEDGES AND AGREES THAT BVNA HAS MADE NO OTHER IMPLIED OR EXPRESSED REPRESENTATION, WARRANTY OR CONDITION WITH RESPECT TO THE SERVICES, FINDINGS, RECOMMENDATIONS OR ADVICE TO BE PROVIDED BY BVNA PURSUANT TO THIS AGREEMENT.**

10. **Indemnity.** Subject to the Limitation of Liability included in this Agreement, BVNA shall indemnify and hold harmless Client from and against losses, liabilities, and reasonable costs and expenses (for property damage and bodily injury, including reasonable attorney's fees), to the extent directly and proximately arising from BVNA's negligent performance of services or material breach under this Agreement. BVNA shall not be obligated to defend the Client until there is an actual finding of negligence or if the parties agree otherwise. Client shall defend, indemnify and hold harmless BVNA, its employees, directors, officers, and agents, from and against claims, losses, liabilities, and reasonable costs and expenses (including reasonable attorney's fees) that are: i) related to, or caused by the negligence or willful misconduct of Client, its employees, or agents; ii) related to this Agreement or the work to be performed by BVNA for which BVNA is not expressly responsible; or iii) the expressed responsibility of the Client under this Agreement.

11. **Limitation of Liability.** To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the total aggregate liability of BVNA and its affiliates and subcontractors and their employees, officers, directors and agents (collectively referred to in this paragraph as "BVNA") for all claims for negligent professional acts, or errors or omissions arising out of this Agreement for services is limited to $50,000 or, if greater, the compensation received by BVNA under this Agreement.

12. **Consequential and Punitive Damages.** Neither BVNA nor Client shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either party under any circumstances.

13. **Insurance.** BVNA, at BVNA's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance Policies with insurers possessing a Best's rating of no less than A:VII:

(a) **Workers' Compensation Coverage:** BVNA shall maintain Workers' Compensation and Employer's Liability Insurance for its employees in accordance with the laws of the state where the services are being performed. Any notice of cancellation or non-renewal of all Workers' Compensation policies will be sent to the Client in accordance with the policy provisions.

(b) **General Liability Coverage:** BVNA shall maintain Commercial General Liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage.

(c) **Automobile Liability Coverage:** BVNA shall maintain Automobile Liability insurance covering bodily injury and property damage for activities of BVNA employee arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit for each occurrence.

(d) **Professional Liability Coverage:** BVNA shall maintain Professional Errors and Omissions Liability for protection against claims alleging negligent acts, errors or omissions which may arise from BVNA's services under this Agreement. The amount of this insurance shall not be less than one million dollars ($1,000,000) on a claims-made annual aggregate basis.

BVNA shall name Client as additional insured and other parties that it deems appropriate to be additionally insured under BVNA's Commercial General Liability policy and Automobile Liability policy, if requested to do so by Client. The Client, on its own behalf and on the behalf of any others that are named as additionally insured at Client's request, agrees that providing such insurance or the additional insured endorsement shall in no way be construed as an assumption by BVNA of any liability for the negligence or willful misconduct or any wrongful behavior on the part of Client or others that are named additionally insured. Client shall name BVNA as additional insured on its Builder's Risk policy.

14. **Cause of Action.** If Client makes a claim against BVNA, for any alleged error, omission, or other act arising out of the performance of its professional services and to the extent the Client fails to prove such claim, then the Client shall pay all costs including attorney's fees incurred by BVNA in defending the claim. Any cause of action brought against BVNA shall be brought within one (1) year of the work or services performed under this Agreement.

15. **Compliance with Laws.** BVNA shall use the standard of care in its profession to comply with all applicable Federal, State and local laws, codes, ordinance and regulations in effect as of the date services provided.

16. **Resolution of Disputes.** All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under this Agreement, (collectively "Disputes") shall be submitted to non-binding mediation before and as a condition precedent to the initiation of legal proceedings. In no event shall any Disputes be subject to binding arbitration. Upon written request by either party to this Agreement for mediation of any dispute, Client and BVNA shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and BVNA within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

17. **Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the state where the BVNA office originating the work or proposal is located.

18. **Releases.** All lien releases will be limited to payment issues; no additional terms and conditions may be added to a release of lien.

19. a. **Termination for Convenience.** Either party may terminate the Services under this Agreement other than by reason of default, at any time, by sending written notice thereof thirty (30) days in advance of the termination date. Upon such termination, Client shall pay BVNA for the Services performed to and including the date of termination. In addition, Client shall pay BVNA for any materials, supplies or equipment which are in transit or under commitment; all other fees and expenses BVNA incurs because of the termination; and a termination charge which, in the absence of agreement to the contrary, shall be ten percent (10%) of the amount which would be required to compensate BVNA for completing the Services.

b. **Termination for Cause.** BVNA may suspend or terminate the Services under this Agreement for cause upon thirty (30) days written notice to Client in the event Client fails to substantially perform Client's obligations under this Agreement. Such failure by Client shall include, but is not limited to, the failure to make payments to BVNA in accordance with the requirements of this Agreement. Client may suspend or terminate the Services under this Agreement for cause upon thirty (30) days written notice to BVNA in the event BVNA fails to substantially perform BVNA's obligations under this Agreement. Such failure shall include, but is not limited to, BVNA's failure to perform the Services under this Agreement in accordance with the standard of care set forth in this Agreement. Upon receipt of written notice, the receiving party shall have thirty (30) days to cure the failure. In the event either party terminates this Agreement for cause and it is later determined or agreed that the non-terminating party had not failed to substantially perform its obligations under the Agreement, the termination shall be treated as a termination for convenience.

c. **Termination by Client.** If the Client terminates this agreement without cause, the Client shall have two options concerning work and assignments that are in-progress. The Client shall select from: (1) Allowing BVNA the opportunity to complete all work and assignments in-progress that may be completed by another provider after the effective date of BVNA's termination; or (2) Providing BVNA with a complete and unconditional release from any and all liability and indemnification requirements regarding all work and assignments that remain in-progress upon BVNA's termination effective date. In the event that Client is silent on termination or does not make an affirmative selection, option (2) providing BVNA with a complete and unconditional release from any and all liability and indemnification requirements will be the default and active selection.

d. **Termination by BVNA.** If BVNA terminates without cause, BVNA will provide client with a thirty (30) day transition period from the notice of termination to allow Client sufficient time to secure a new Service Provider. During this transition period, BVNA and Client's responsibilities under this agreement will remain in full force and effect. At the end of the thirty (30) day transition period BVNA will cease all activities. In the event Client shall request BVNA to continue to provide any Services beyond the expiration of the transition period, including any extensions, then BVNA and Client may negotiate in good faith terms of any such extension, including the pricing of Services

20. **Force Majeure.** A delay in, or failure of, performance of either party hereto shall not constitute a default hereunder or give rise to any claim for damage if and to the extent such delay or failure is caused by (an) occurrence(s) beyond the reasonable control of the party affected, including, but not limited to, act(s) of God, or the public enemy,

expropriation or confiscation of facilities or compliance with any order or request of governmental authority or person(s) purporting to act therefore affecting to a degree not presently existing the supply, availability, or use of engineering personnel or equipment, act(s) of war, public disorder(s), insurrection(s), rebellion(s), or sabotage, flood(s), riot(s), strike(s), or any cause(s), whether or not of the class or kind of those specifically named above, not within the reasonable control of the party affected, and which, by the exercise of reasonable diligence, said party is unable to prevent. A party who is prevented from performing for any reason shall immediately notify the other party in writing of the cause of such non-performance and the anticipated extent of the delay.

21. **Audit.** Client shall have the right during the course of the Work and until one (1) year after acceptance of the Services to audit BVNA's books and records relating to the costs to be reimbursed pursuant to Article 3. BVNA shall, during the progress of the Services, provide Client with evidence of payment for and records of receipt of materials, supplies and equipment as they become available and are presented for payment, together with such other data as Client may reasonably request.

22. **Remedies.** The obligations and remedies provided herein are exclusive and in lieu of any other rights or remedies available at law or in equity.

23. **Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

24. **Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

*If to Client:* _____

_____

_____

*If to BVNA:* Bureau Veritas North America, Inc.
Attn: Contract Processing
1000 Jupiter Road, Suite 800
Plano, Texas 75074

*With cc to:* Bureau Veritas North America, Inc.
Attention: Legal Department
1601 Sawgrass Corporate Parkway, Suite 400
Fort Lauderdale, FL 33323

25. **Confidential Information.** Neither party shall disclose information identified as confidential to anyone except those individuals who need such information to perform the Services; nor should either party use such confidential information, except in connection with the Work, the performance of the Services or as authorized by the other party in writing. Regardless of the term of this Agreement, each party shall be bound by this obligation until such time as the confidential information shall become part of the public domain. Confidential information shall not include information which is either: (i) known to the public; (ii) was known to the receiving party prior to its disclosure; or (iii) received in good faith from a third party. If either party is required to produce information by valid subpoena or Court order, parties agree to first provide prompt notice to other party in order to allow the party to seek a protective order or other appropriate remedy. This shall not prevent either party from disclosing information to the extent reasonably necessary to substantiate a claim or defense in any adjudicatory proceeding. Client agrees that BVNA shall be permitted to use Client's name and logos in BVNA's marketing materials unless advised or prohibited against it by the Client in writing. The technical and pricing information contained in any proposal or other documents submitted to Client by BVNA is to be considered confidential and proprietary and shall not be released or disclosed to a third party without BVNA's written consent.

26. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties and shall supersede other agreements and representations made prior to the date hereof. No amendments to this contract or changes in the Scope of the Services shall be valid unless made in writing and signed by the parties. Pre-printed terms and conditions (including, but not limited to, waivers of rights and remedies, and variations from any of the warranty, guarantee, standard of care, indemnity, and liability provisions) contained in purchase orders, work orders, invoices or other documents issued by Client with respect to any Services shall have no force or effect and shall be superseded by the terms and conditions herein. The captions in this Agreement are for purposes of convenience only and form no part of this Agreement. In no event shall they be deemed to limit or modify the text of this Agreement. The invalidity or unenforceability of any portion(s) or provision(s) of this Agreement shall in no way affect the validity or enforceability of any other portion(s) or provision(s) hereof. Any invalid or unenforceable provision(s) shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain a particular portion(s) or provision(s) held to be invalid or unenforceable. In the event the terms and conditions of this Standard Professional Services Agreement conflict with the terms and conditions of any other agreement, this Agreement shall govern and control over any such conflicts.

27. **Non-Solicitation / Hiring of Employees.**

(a) To promote an optimum working relationship, the Client agrees in good faith that for the term of this Agreement and one year after the completion or termination of the Agreement not to directly or indirectly employ or otherwise engage any current employee of BVNA or any former employee of BVNA who left the employ of BVNA within the six (6) months prior to and including the date of the execution of the Agreement. The loss of any such employee would involve considerable financial loss of an amount that could not be readily established by BVNA. Therefore, in the event that Client should breach this provision and without limiting any other remedy that may be available to BVNA, the Client shall pay to BVNA a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

(b) BVNA's employees shall not be retained as expert witnesses except by separate written agreement. Client agrees to pay BVNA's legal expenses, administrative costs and fees pursuant to BVNA's then current fee schedule for BVNA to respond to any subpoena.

28. **Prevailing Wage.** This Agreement and any proposals hereunder specifically exclude compliance with any project labor agreement or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of the proposal, this Agreement and any proposals hereunder specifically exclude compliance with any State or Federal prevailing wage law or associated requirements, including the Davis Bacon Act. Due to the professional nature of its services, BVNA is generally exempt from the Davis Bacon Act and other prevailing wage schemes. It is agreed that no applicable prevailing wage classification or wage rate has been provided to BVNA, and that all wages and cost estimates contained herein are based solely upon standard, no-prevailing wage rates. Should it later be determined by the Client or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of this agreement shall be equitably adjusted to account for such changed circumstance. These exclusions shall survive the completion of the project and shall be merged into any subsequently executed documents between the parties, regardless of the terms of such agreement. Client will reimburse, defend, indemnify and hold harmless BVNA from any liability resulting from a subsequent determination that prevailing wage regulations cover the Projects, including all costs, fines and reasonable attorney's fees.

29. **Interpretation of Agreement.** This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.

30. **Waiver of Jury Trial.** Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

31. **Third Party Beneficiary.** It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and BVNA. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and BVNA that any such person or entity, other than Client or BVNA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

32. **Assignment.** Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no

consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by BVNA or an assignment to an Affiliate of BVNA if such successor or Affiliate assumes all obligations under this Agreement. Any attempted assignment, which requires consent hereunder, shall be void and shall constitute a material breach of this Agreement if such consent is not obtained.

**CLIENT**

* By: Jerry D Roseberry

Print Name: Jerry D. Roseberry

Title: Mayor

Date: 4/2/2018

**BVNA**

By: _____

Print Name: _____

Title: _____

Date: _____

DTQRR: _____

Date: _____

Attachment A - Scope of Services
Attachment B – Fee Schedule

**ATTACHMENT A**
SCOPE OF SERVICES

**Code Enforcement/Property Maintenance Inspections**
Property maintenance inspections will be conducted in accordance with the City of Oxford's Code of Ordinances and the International Property Maintenance Code. Inspections are performed as needed when complaints are made by the City of Oxford or its citizens. Voluntary compliance is sought through education and conversation with the violator. Citations are issued at the discretion of the City as it pertains to the minimum days to comply as stated in the Code of Ordinances. The inspector will keep a record on file of all cases and the activity involved with each case. If necessary, the inspector will appear in court to testify in behalf of the City. The City of Oxford is the final interpretive authority.

**CLIENT INITIALS:** _____

**BVNA INITIALS:** _____

**ATTACHMENT B**
FEE SCHEDULE

**Code Enforcement/Property Maintenance Inspections**
Hourly Rate
For the enforcement of City Nuisance and Zoning Ordinances, BVNA will invoice the client at an hourly rate of $80.00 per hour for each day the service is specifically requested.

For work performed outside of normal operating hours (Monday – Friday 8:00 am – 5:00pm), BVNA will invoice the client at an hourly rate of $125.00 per hour with a 2 hour minimum.

**CLIENT INITIALS:** _____
**BVNA INITIALS:** _____