

**BRYAN MUNICIPAL UTILITIES**

**REQUEST FOR PROPOSALS  
FOR THE SUPPLY OF  
SOLAR ENERGY & CAPACITY**

**September 5, 2025**

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**1.0 SCOPE**

Bryan Municipal Utilities (“BMU”) is issuing this Request for Proposals for the Supply of Solar Energy and Capacity (“RFP”) including, but not limited to, energy, capacity and associated environmental attributes/renewable energy credits from a solar-powered generation project (“Solar Project”). BMU is requesting proposals to develop the Solar Project under a Solar Power Purchase Agreement (“Solar PPA”). Preference will be shown for Solar PPA proposals under which BMU would have the option to purchase and own the facilities at a later date.

**2.0 SCHEDULE**

The following schedule and deadlines apply to this solicitation:

Release of RFP: September 5, 2025  
**Proposals Due: September 19, 2025**  
Establish Short List: September 26, 2025  
Selection of Developer: October 7, 2025  
Execution of Contracts: December 31, 2025  
Commercial Operation Date: November 1, 2026

BMU reserves the right to revise the schedule to accommodate changes.

**3.0 PROJECT DESCRIPTION**

**A. Background**

BMU is an Ohio municipality located in Williams County that owns and operates an Electric System providing electricity to approximately 5,800 customers in and around the City of Bryan. BMU is seeking opportunities to collaborate with a developer for the purpose of developing the Solar Project at the site shown in Attachment I (Solar Project Site).

The project envisions ground mounted solar energy generation facilities capable of delivering the maximum amount of capacity and energy possible for the Solar Project Sites. The specific technology is left up to the respondent to propose; however, preference will be given to proposals that include a single-axis tracking system. BMU’s objective is to obtain the maximum level of generation at the lowest overall cost.

## **B. Solar PPA**

BMU is most interested in a Solar PPA with a twenty-five year or longer term that takes into consideration the federal Investment Tax Credits ("ITCs") and the allowance for accelerated depreciation. BMU, as a non-profit governmental entity, would look to the developer to take advantage of the ITCs and accelerated depreciation and build those benefits into their response. BMU is also interested in a structure in which the developer would offer the BMU the option of purchasing the solar facility at some point in the future. The selected developer would design, construct, own, operate and maintain the facility and would sell the output to BMU under the Solar PPA. The developer will be responsible for all equipment, materials, and services required for complete operating facilities, including any applicable taxes, and will be required to execute an agreement in substantially the same form as the Standard Solar PPA provided in Attachment II. Exceptions to the terms and conditions set forth in the Standard Solar PPA must be clearly identified in the response to this RFP.

## **C. Site and Easement Agreement**

The Solar Project is to be built on the Solar Project Sites identified in Attachment I, which is owned by BMU. BMU and selected developer shall enter into an Easement Agreement (EA) allowing the developer to construct and operate the solar facility on the sites. The term of the EA will coincide with the term of the Solar PPA. Developer will be responsible for preparation and maintenance of the site, and will be required to execute an agreement in substantially the same form as the Standard EA provided in Attachment III. Exceptions to the terms and conditions set forth in the Standard EA must be clearly identified in the response to this RFP.

## **D. Interconnection & Metering**

The Solar Project will interconnect with the BMU's electric distribution system at the site. The metering equipment shall be installed by the developer at the point of interconnection. BMU shall be responsible for all costs associated with extending its electric facilities to the point of interconnection, which will be adjacent to the Solar Project Site. The developer shall be responsible for all costs associated with delivering power to the points of interconnection.

## **4.0 PROJECT SELECTION**

Proposals will be judged based on their ability to meet BMU's need for economical and reliable renewable energy in the proposed timeframe. Respondents to this solicitation should provide all relevant information necessary to allow BMU to conduct a thorough analysis of their proposal. The principal criteria to be used by BMU in evaluating proposals include, but are not necessarily limited to, total delivered cost of the energy over the contract term, the design and reliability of the project, and the financial and operational wherewithal of the respondent. BMU reserves the right to consider any other factors that it deems to be relevant to its needs, and to request additional information from individual respondents or to request all respondents to submit

supplemental materials in fulfillment of the content requirements of this RFP or to meet additional information needs of BMU.

BMU also reserves the unilateral right to waive any technical or format requirements contained in the RFP. Furthermore, BMU, in its sole discretion, will analyze any financial, operational, or other necessary criteria to determine that the respondent has the capability to fulfill their proposal. Finally, BMU reserves the right to withdraw this solicitation at any time and/or reject all offers received.

Respondents are encouraged to include the following information:

*Past Experience.* BMU will consider past experience of respondents in designing, installing, owning, operating, and maintaining solar energy projects of similar size and complexity. If the respondent forms a joint venture or other teaming arrangement, these same considerations will be applied to the parties to the joint venture or teaming arrangement cumulatively.

*Pricing.* For each separate Solar Project Site, provide a fixed price per megawatt-hour (\$/MWh) for energy, capacity and all environmental attributes/renewable energy credits for the term of the Solar PPA. Any non-fixed pricing should be stated as a schedule of annual prices. Please note that pricing needs to reflect the developer being responsible for all applicable property taxes and other taxes associated with installing, owning and operating the facility.

*Proposed System Conceptual Design & Technical Specifications.* Describe the preliminary design/layout of the solar facility, type of technology, efficiency, panels and tracking system, and the proposed point of interconnection. Also provide an estimate of the peak AC output, the initial year output in megawatt-hours (MWh) and the anticipated annual rate of degradation of the panels.

*Financial Capability.* Provide verifiable information demonstrating that the respondent is in sound financial condition and has the ability to secure the necessary financing to meet the project's requirements now and in the future. The respondent's financial capability will be reviewed for stability and adequacy to meet its obligations under the proposal. If the respondent plans to secure financing from an outside source, an official letter from the financier confirming the financial arrangement may be required.

## **5.0 RESPONSE SUBMISSION**

Electronic (scanned) copies of proposals shall be submitted to BMU by **5:00 PM Eastern Time, on September 19, 2025.**

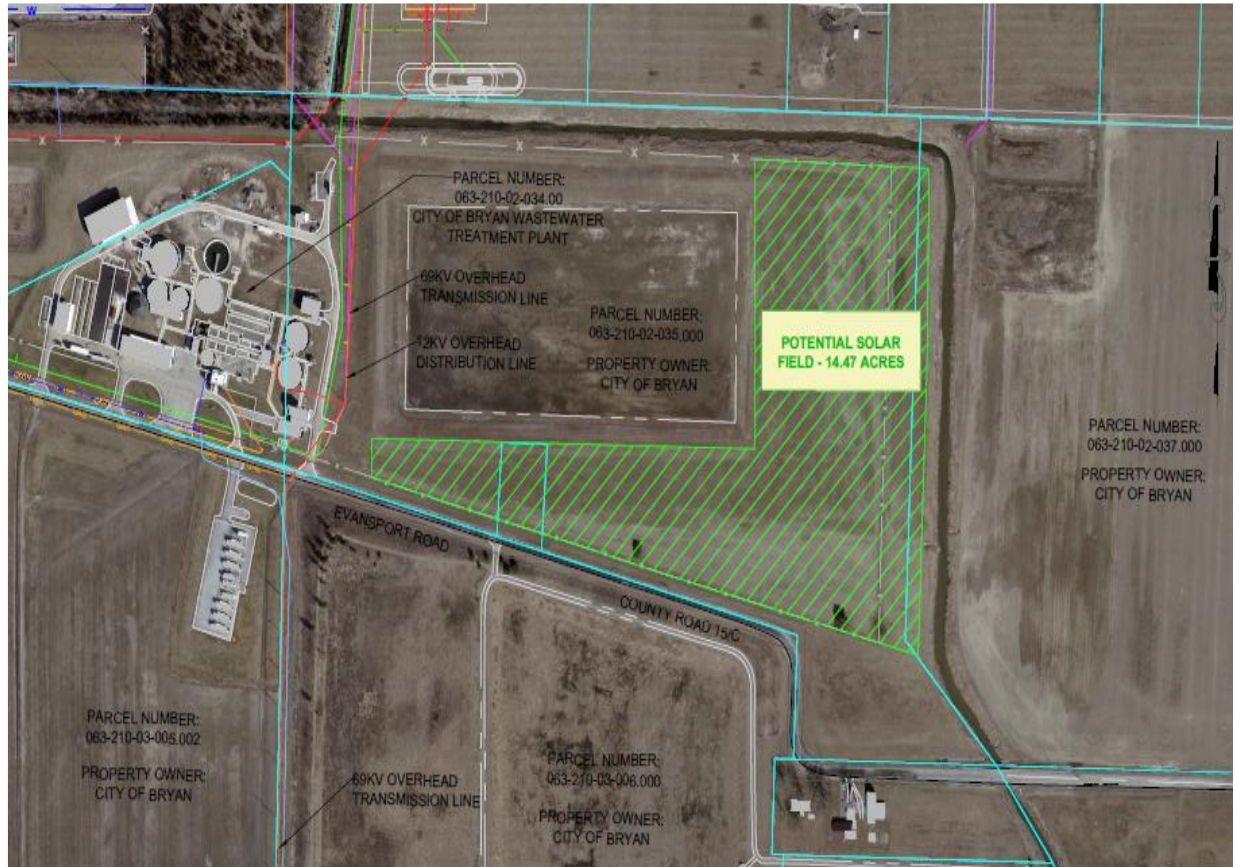
Send electronic copies to: [john@courtney-associates.com](mailto:john@courtney-associates.com) and [dschultz@cityofbryan.com](mailto:dschultz@cityofbryan.com)

Any questions regarding this RFP are to be submitted **in writing** to the above email addresses.

## Attachment I

# SOLAR PROJECT SITE

Located on Williams County Road 15C east of Bryan's Wastewater Treatment Plant.



Attachment II

# **STANDARD SOLAR PPA**

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (“PPA”) dated as of \_\_\_\_\_, 2025 (the “Effective Date”) is by and between \_\_\_\_\_ (“Provider”), and BMU of Bryan, Ohio, an Ohio municipality (“Customer”). (Provider and Customer are together referred to herein as the “Parties” and each individually as a “Party”).

### RECITALS:

A. WHEREAS, Customer and Provider desire to agree to terms whereby Provider will supply certain services (“PPA Services”) to Customer including:

- the delivery of electrical energy (the “Energy”) generated by a photovoltaic system and other facilities and equipment as more fully described in Exhibit A (the “System”) to the Site (as defined below); and
- arranging for or providing operation and maintenance as agreed to by the Parties; and

B. WHEREAS, the Customer is the fee simple owner of certain real property and related improvements located \_\_\_\_\_, the legal description of which is provided in Exhibit B (the “Site”) and, concurrently with the execution of this PPA, the Customer will grant to Provider a recordable easement pursuant to an easement agreement, the form of which is attached hereto as Exhibit C, authorizing the Provider to construct, own, maintain, and operate the System on the Site (“Easement Agreement”); and

C. WHEREAS, on the terms and conditions set forth in this PPA, the Provider shall: (i) design, build, own, operate, and maintain the System on the Site or a portion thereof, (ii) sell the Energy, capacity, and Environmental Attributes (as defined below) to the Customer, all included within the Price (as defined below), and (iii) at Provider’s cost, remove the System and restore the Site to its pre-System condition in accordance with section 10.3.1 promptly after the Termination Date (as defined below); and

D. WHEREAS, the Provider’s obligations under this PPA do not include the installation of a battery energy storage system or any other type of energy storage system. The Customer reserves the right to install, or have installed, a battery energy storage system or other type of energy storage system, provided that such battery energy storage system (i) is not connected to, and does not affect, the System, (ii) is not located on the Site, and (iii) does not hinder Provider or Customer in fulfilling its obligations under this PPA.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**AGREEMENT:**

1. Definitions. Definitions not provided within the body of this PPA are set forth in Exhibit D hereto.

2. PPA Services. Subject to the terms and conditions set forth in this PPA, Provider agrees to provide the PPA Services to Customer. Customer shall provide Provider with all necessary access to the Site consistent with the Easement Agreement. Provider may, at its sole discretion and sole cost and expense, use design professionals and any level of consultants and contractors and any level of subcontractors to perform its obligations hereunder so long as such consultants or contractors are properly qualified and licensed as required under Ohio law to perform services as may be required by Ohio law.

3. System Installation.

3.1 Installation. Provider will cause the System to be designed, engineered, installed and constructed in accordance with the terms of this PPA and the Easement Agreement, and subject to approval of the plans and design by Customer in conformance with Section 3.2.7 hereof, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in the event that Provider reasonably determines that it is unable to install the System at the Site, it shall be under no obligation to do so and, upon the delivery of written notice to that effect from Provider to Customer, this PPA shall terminate and be of no further force or effect. Installation of the System, or any portion of the System, shall include the installation of any structures related to the System deemed necessary by Provider in connection with the operation or maintenance of the System, all of which shall be installed at Provider's sole cost and expense.

3.2 Conditions Precedent to Commencement of Construction and Installation. Commencement by the Provider of construction and installation activities with respect to a System shall be subject to the satisfaction of the following conditions precedent:

3.2.1 Provider shall have executed an Easement Agreement in recordable form with Customer with respect to the Site which the Parties agree to record in the real estate records of the County in which the Site is located, at Provider's expense;



3.2.2 Provider shall have closed on the full financing related to its obligations hereunder, as appropriate and a Notice of Commencement shall have been prepared, recorded and posted in accordance with Chapter 1311 of the Ohio Revised Code, as appropriate;

3.2.3 Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;

3.2.4 Provider shall have obtained the zoning permits, licenses, interconnection and other approvals required by Applicable Law and/or the local utility providers;

3.2.5 Customer and Provider shall have complied with any applicable requirements of Sections 3781.27 through 3781.32 of the Ohio Revised Code relating to the protection of underground utilities;

3.2.6 Provider shall have obtained, at its absolute discretion, any Site survey, engineering inspection or environmental report verifying the suitability of the Site for construction, installation, and ongoing operation of the System;

3.2.7 Provider shall have provided Customer with a preliminary design drawing and layout of the System for Customer's review and approval by Customer, which approval shall not be unreasonably withheld;

3.2.8 Customer shall have provided to Provider the NDA/Non-disturbance Agreement required by the Easement Agreement for all Mortgages and other liens existing against the Site as of the Effective Date (if any);

3.2.9 Provider shall have provided Customer with a parent guarantee or other financial assurance in form and amount reasonably satisfactory to Customer for Provider's removal of the System at termination of this PPA; and

3.2.10 In the event that any of the foregoing conditions precedent are not completed in full or waived by Provider by \_\_\_\_\_, either Party may terminate this PPA prior to commencement of construction of the System without default or liability of any kind under this PPA. Alternatively, in the event that such conditions precedent have not been completed or waived by such date, the Parties may (but shall not be obligated to) mutually agree in writing to amend this PPA to revise the Commercial Operation Date and Term of this PPA to provide additional time for completion of the foregoing conditions precedent.

3.3 Permits and Licenses Approvals and Commercial Operation Date.

3.3.1 Customer agrees to provide commercially reasonable assistance and cooperation to Provider in connection with Provider's fulfillment of its sole responsibility for obtaining necessary permits, licenses, and approvals in connection with the installation, operation, and maintenance of the System. All costs associated with obtaining approvals for the System shall be the responsibility of Provider. If and to the extent required by any permitting, licensing or approval entity, Customer shall, as reasonably requested by Provider, file or join in the filing of any and all applications and submissions or other actions necessary to obtain the permits, licenses, and approvals in connection with the installation, operation and maintenance of the System and not oppose any effort of Provider necessary thereto.

3.3.2 The "Commercial Operation Date" shall be the date that the System initially delivers Energy to the Interconnection Point, as defined below. Provider shall notify Customer in writing of the date on which the Commercial Operation Date occurred.

3.3.3 Subject to Section 9, Provider shall cause the Commercial Operation Date to occur no later than \_\_\_\_\_ (the "Target Commercial Operation Date"), unless the Parties expressly so agree in a written modification to this PPA; provided that, if Provider has made material progress in the construction of the System, the Parties will negotiate an updated Target Commercial Operation Date in good faith based on the expected construction timeline as of such date.

#### 3.4 Delivery of Energy.

3.4. 1 The System shall not be connected to the Interconnection Point, as defined below, and Provider is under no obligation to begin delivering Energy to the Site, unless and until all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect, unless such failure to obtain such permit or license does not materially and adversely affect the System or the Site. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date that is not caused by Provider's negligence or intentional act or omission, or by its employees, agents, or contractors.

3.4.2 Financial Incentives and Environmental Attributes. Subject to any Purchase Option (as defined in Section 10.3) properly exercised during the Term, all Financial Incentives available in connection with the System shall be owned by Provider and all Environmental Attributes shall be owned by Customer. Provider shall use all Commercially Reasonable Efforts to assist Customer in obtaining and establishing and verifying the existence of all Environmental Attributes, including RECs, currently available or that may subsequently become available in connection

with the System and its operation. Each Party shall complete documentation or take actions reasonably requested by the other Party in order to document such Party's ownership of Environmental Attributes or Financial Incentives, as applicable.

3.5 Interconnection Point. The point where the System is interconnected to Customer's electric distribution system is hereinafter referred to as the **"Interconnection Point"** as shown on the Site Plan in Exhibit H. Risk of loss related to Energy will transfer from Provider to Customer at the Interconnection Point. Customer will be deemed to be in exclusive control of the Energy at and from the Interconnection Point and responsible for any damage, claims or injuries caused thereby, unless such damage, claims, or injuries were proximately caused by Provider, or Provider's agents, contractors, or employees.

3.6 Compliance with Applicable Laws, including Utility Interconnection Standards. At all times, Provider, at its own cost and expense, shall comply with Applicable Laws, standards required by this PPA (including the National Electrical Safety Code and the currently effective version IEEE Standard 1547 as of the Effective Date of this PPA), and Good Utility Practice relating to the operation of the System and the generation and sale of Energy to Customer, including obtaining and maintaining all relevant approvals and permits. In particular, Provider, throughout the Term of the PPA, will comply, in all material respects, with any and all operational standards and requirements imposed by all Governmental Authorities, and comply, in all material respects, with the electrical interconnection requirements as stated in the applicable and controlling local rules and regulations. The electrical interconnection shall be done at no cost to Customer.

3.6.1. The Provider shall test and inspect its System and Interconnection Facilities prior to interconnection. The Provider shall notify the Customer of such activities no fewer than five Business Days (or such other period as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. The Customer may, at its own expense, send qualified personnel to the Site to inspect the interconnection and observe the testing. The Provider shall provide the Customer a written test report when such testing and inspection is completed.

3.6.2. The Customer shall provide the Provider written acknowledgment that it has received the Provider's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Customer of the safety, durability, suitability, or reliability of the System or any associated control,

protective, and safety devices owned or controlled by the Provider or the quality of power produced by the System.

3.6.3. The Provider shall not operate its System in parallel with the Customer's Electric System without prior written authorization of the Customer. The Customer will provide such authorization once the Customer receives notification that the Provider has installed and connected the System in accordance with the requirements of this Agreement and the applicable interconnection agreement. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

3.6.4. Upon reasonable notice, the Customer may send a qualified person to the Site at or immediately before the time the System first produces energy to inspect the interconnection, and observe the commissioning of the System (required testing), startup, and operation for a period of up to three Business Days after initial start-up of the unit. In addition, the Provider shall notify the Customer at least five Business Days prior to conducting any on-site verification testing of the System.

3.6.5. Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Customer shall have access to the Provider's premises in connection with the performance of the obligations imposed on it by this Agreement; provided that, except in the event of an emergency, Customer shall (i) be escorted by Provider at all times (ii) comply with all safety requirements of Provider, (iii) not interfere with Provider's activities, and (iv) be responsible for any actual loss or damage that is agreed by Customer to be, or finally determined to be, caused by the fault or negligence of Customer or its agents.

3.6.6. Each Party shall be responsible for its own costs associated with following this article.

#### 4. Operation and Maintenance; Title to System.

4.1 Operation & Maintenance and Technical Assistance. Provider shall pay for and provide operation, repair, monitoring and maintenance services to the System and Easement Area during the Term of this PPA, including the monitoring and maintenance of metering equipment determining the quantity of Energy produced by the System. Provider, as it deems appropriate, shall maintain, pay for, and provide access to the phone, computer, or other communication lines necessary to permit Provider to record, and Customer to monitor and verify, the electrical output of the System for the entire Term.

4.2 Malfunctions. A Party shall notify the other Party within one Business Day following the discovery by the Party of: (a) any material malfunction in the operation of the System, or (b) an interruption in the supply of PPA Services. Provider and Customer each shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.3 Title to System. Provider, or Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal, state or local law, the ITC, the Cash Grant (both as defined in Section 13.11) and any other Financial Incentives.

4.3.1. The System shall remain the property of Provider or Provider's successors and assigns, and the System shall remain severable from the real property of Customer in all respects.

4.3.2. Customer covenants that it shall keep the System free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Provider or its creditors) and will use Commercially Reasonable Efforts to place all persons having an interest in or lien upon the real property comprising the Site on notice of the ownership of the System and the legal status or classification of the System as personal property; *provided, however*, that it is the Provider's sole responsibility to satisfy or otherwise secure removal of (a) mechanics' and materialmen's liens asserted by contractors, subcontractors, or materialmen engaged by the Provider, and (b) judgment liens or prejudgment attachments asserted by third parties against the Provider. In the event that a mortgage or fixture filing exists or is made against the Site by a third-party creditor of the Customer which filing could be construed as prospectively attaching to the System as a fixture of the Site, Customer shall provide to Provider a disclaimer, release, or comparable instrument reasonably acceptable to Provider from such third-party creditor, confirming that the security interest represented by such third-party creditor's filing does not attach to the System or its components. Customer, as fee owner of the Site, consents to the filing of a disclaimer of the System as a fixture of the Site in the property records of Wyandot County, Ohio.

4.3.3. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in order to protect its rights in the System and to keep such filings in full force and effect during the Term. Customer consents to such filings so long as they reflect the Parties' agreement that any filing to perfect or provide notice of the security interest clearly documents the Parties' intent that the System is considered personal property only and is not considered a fixture to the Site. These filings by Provider or Lender may include filing of a Financing Statement (FORM UCC-1)

which clearly covers the System as personal property only and not as a fixture. Such filing shall not create any interest in or lien upon the real property underlying the Site or the Easement Area or the interest of the Customer therein.

4.4 Section 7701. It is the intention of the Parties that this PPA meet the service-contract, safe-harbor test for alternative energy facilities as set forth in Sections 7701(e)(3) and (e)(4) of the Code (and any related Treasury Regulations and IRS administrative pronouncements), so that the PPA is deemed to be treated as a “service contract” and not as a “lease” pursuant to Code Section 7701(e). The Parties shall make such amendments to this PPA as may be required to achieve such compliance as reasonably requested by Provider and its legal counsel so that the PPA is treated as a “service contract” and not as a “lease” for purposes of Code Section 7701(e), subject to approval by Customer’s legal counsel that said amendments do not substantially increase Customer’s obligations, liabilities, or costs.

4.5 Suspension of Delivery of Energy/Outages. Absent an emergency or a Force Majeure Event, Provider shall only be entitled to suspend delivery of Energy from the System for the purpose of scheduled maintenance and repair of the System and such suspension of service shall not constitute a breach of this PPA, provided that: (a) no such outages shall be scheduled to take place during the calendar months of June, July, August or September, (b) Provider shall provide at least five (5) calendar days advance written notice to Customer of all outages, except in the case of an unscheduled outage caused by an emergency or a Force Majeure Event, in which case the Provider shall provide written notice describing the cause and potential duration of the outage and the efforts being made by the Provider to eliminate the cause of the interruption as soon as reasonably practicable, and (c) Provider shall use Commercially Reasonable Efforts to minimize any and all interruptions in service to the Customer. Absent an emergency or Force Majeure Event (which shall be promptly evidenced by a detailed written notice from Provider to Customer describing the cause and potential duration of the outage), the Customer shall not take any action to suspend production or receipt of Energy from the System at any time without written consent of the Provider.

4.6 Hazardous Materials. Provider is prohibited from transporting or bringing onto the Site any chemicals or pesticides that could reasonably be expected to materially and negatively affect the Site and shall otherwise comply with federal and state environmental protection laws and regulations while on the Site. Provider and Installer are not responsible for any hazardous materials encountered at the Site, which were not brought onto the Site by Provider or Installer (“Host Hazardous Materials”).

4.6.1. Prior to commencing with the design of the System, Provider shall commission an environmental assessment of the Site to determine if any Host Hazardous Materials exist at the Site. If the environmental assessment determines that Host Hazardous Materials exist at the Site, the parties will meet to discuss alternatives for remediating the Host Hazardous Materials. If, within thirty (30) calendar days of receipt of the environmental assessment, the Parties cannot reach agreement regarding remediation of the Host Hazardous Materials, then either Party shall have the right to terminate this PPA without default or further obligation or liability to the other Party.

4.6.2. Notwithstanding the environmental assessment to be paid for by Provider prior to the commencement of construction, during the duration of this PPA, Provider may terminate this PPA at any time upon becoming aware of any Host Hazardous Materials that are present at the Site. If this PPA is terminated due to Host Hazardous Materials that are the direct result of Customer's actions or failure to act after the signing of this PPA, then Customer shall reimburse Provider for all out-of-pocket expenses reasonably incurred by Provider in the design and installation of the System prior to the discovery of the Host Hazardous Materials and in demobilizing and decommissioning the System after the discovery of the Host Hazardous Materials.

4.6.3. Provider on behalf of itself and any Installer or other contractor or agent of Provider acknowledges that Customer has not made any representations or warranties regarding the Site and Provider is not relying upon any representation or warranty by Customer or any third party regarding the Site, the fitness of the Site for any particular use of Provider or any other matter. Provider represents and warrants that its activities do not require use, storage, generation, or disposal of any hazardous materials.

#### 4.7 Metering.

4.7.1 Provider will measure the actual amount of Energy delivered to the Customer by the System and delivered to the Site by the Customer at the Interconnection Point utilizing a revenue grade, bi-directional, data-recording meter consistent with industry practice for distributed generation installers of solar systems (the "Meter").

4.7.2 Provider will have the Meter tested no less than once every five (5) years at Provider's expense by a certified, independent, third party approved by the Customer. Customer shall be allowed to observe the Meter test, and Provider shall provide notice of the testing to the Customer at least three (3) Business Days prior to the test date. Upon request by Customer, Provider shall provide signed copies of

the results of the Meter test to the Customer. In addition to such test every five (5) years, Provider shall test the Meter at any reasonable time upon the request of the Customer if Customer has reasonable evidence to suggest that a test is appropriate. Customer shall reimburse Provider for the cost of any test requested by the Customer, unless such testing demonstrates that the Meter was operating outside of tolerance allowances as set forth in rules or standards promulgated by the Public Utilities Commission of Ohio for meter calibration and operation.

4.7.3 If a Meter is determined to be inaccurate and such inaccuracy exceeds tolerance allowances as set forth in Ohio Admin. Code 4901:1-10-15 and American National Standards Institute (“ANSI”) Standard C12.1 therein referenced and duly promulgated replacement or successor standards of comparable scope, then the Parties shall work together to determine a reasonable adjustment based on existing information. If the Parties are unable to agree as to the appropriate adjustment, such dispute shall be submitted to mediation in accordance with Section 13.14 of this PPA. Adjustments that benefit the Customer shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments that benefit Provider shall be included on Provider’s next invoice to the Customer.

4.7.4 The Meter installed by Provider will have the capacity to register the flow of Energy both from the Provider to the Customer and from the Customer to the Provider.

4.8 Compliance with Utility Specifications. Provider shall ensure that all Energy generated by the System conforms to applicable Customer specifications in effect as of the Effective Date for Energy being generated and delivered to the Interconnection Point, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of testing and verification, and all related costs.

5. Purchase and Sale of Energy. With respect to the System installed pursuant to this PPA:

5.1 Purchase Requirement. Except as provided in Section 4.5 of this PPA, Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term (or any renewal thereof) as calculated and billed on the basis of kWh of Energy produced as set forth in Section 6.1.

5.2 RECs.

5.2.1 Customer’s purchase of Energy includes all Environmental Attributes, including RECs and Reporting Rights, but does not include ITCs, the Cash Grant, or Financial Incentives, all of which shall be retained and owned by



Provider absent a properly exercised Purchase Option. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's right, title and interest in and to the RECs and to transfer such RECs under any applicable transaction arranged by Customer during the Term. If the standards used to qualify the RECs to which Customer is entitled under this PPA are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the RECs to comply with new standards as changed or modified.

5.2.2 Neither Party shall take any action or suffer any omission at the Site that would have the effect of impairing the value to the other Party of the Environmental Attributes or Financial Incentives. A Party shall be solely responsible for notifying the other Party of any action or omission taken by the first Party that could impair such value and for consulting with the other Party as necessary to prevent impairment of the value of Environmental Attributes and Financial Incentives.

## 6. Price and Payment.

6.1 Price. Customer shall pay Provider for the Energy provided pursuant to the terms of this PPA at the rate per kWh (the "kWh Rate") set forth in Exhibit E, plus any additional amount required pursuant to Section 6.2.

6.2 Taxes. Except as otherwise provided herein, Customer and Provider will each be responsible for paying the taxes, fees, or charges, and including related interest, penalties, and additions (collectively, "Taxes" and singularly, "Tax") imposed upon it by any taxing authority, including but not limited to: (a) sales, use, or similar excise Taxes with respect to the sale of Energy to Customer, (b) sales, use, or similar excise Taxes imposed with respect to Provider's acquisition and installation of the System, (c) Taxes on or measured by net income or gross receipts and imposed for the privilege of doing business by any tax authority, including, but not limited to, the commercial activity tax imposed by Ohio Revised Code Chapter 5751, (d) public utility gross receipts Tax imposed by Ohio Revised Code Chapter 5727 (if applicable), and (e) any sort of ad valorem or similar property Tax assessed or imposed upon, or with respect to, the Site or the System or Provider's ownership or use of the Site.

6.2.1. Notwithstanding this Section 6.2, to the extent that Provider is required to collect any Taxes from Customer which are assessed against or imposed upon Customer or its property, Customer will promptly pay such amount to Provider to be remitted to the tax authority unless Customer provides Provider with a completed exemption certificate stating the reason that it is not required to pa

such Tax. Customer agrees to cooperate in any reasonable manner requested by Provider to qualify for any exemption for any of the Taxes.

6.2.3. In the event that the System is purchased by Customer, any sales, use, or similar excise Tax imposed upon such transaction shall be borne by the Customer, and, if required or permitted by law, Customer shall pay such Tax to Provider to be remitted to the taxing authority unless Customer provides a completed exemption certificate stating the reason that it is not required to pay such Tax.

6.2.4. Customer and Provider agree that in the event that there is any Tax assessed or imposed upon Provider or its property, that is not mentioned in the first sentence above, is a Tax that was not effective as of the Effective Date, or represents a five percent (5%) or more increase (including as a result of an exemption no longer being applicable) in the amount of any Tax mentioned above, Provider shall be entitled to increase the kWh Rate set forth in Exhibit E to compensate or reimburse it for fifty percent (50%) of such amount or, if required or permitted by law, shall collect such fifty percent (50%) amount from Customer to be remitted to the taxing authority. Customer and Provider agree that so long as Customer provides an exemption certification indicated that it is exempt from paying a Tax that Provider is assessed and is wanting to pass on to Customer, Customer shall not be responsible for remitting payment for such Tax, and Provider shall not be entitled to an increase in the kWh Rate set forth in Exhibit E to compensate it or reimburse it for the amount of the Tax assessed. Similarly, Customer and Provider agree that in the event that there is any decrease to or elimination of any Tax that is mentioned in the first sentence above, is a Tax that was effective as of the Effective Date, or represents a five percent (5%) or more decrease (including as a result of an exemption becoming applicable) in the amount of any Tax mentioned above (including any reduction or elimination of a Tax that has increased the kWh Rate as described above), Provider shall be required to decrease the kWh Rate set forth in Exhibit E to reflect fifty percent (50%) of the reduction or elimination. Provider shall be required to promptly notify Customer of any decrease to or elimination of any Tax that would trigger this provision. Notwithstanding the foregoing provisions of this Section 6.2, the Site is currently exempt from all real estate or ad valorem taxes and to the extent the System subjects the Site to such taxes, Provider shall be solely responsible for payment of such taxes.

6.3 Billing and Payment. Billing and payment for the Energy sold and purchased under this PPA and any other amounts due and payable hereunder shall be as follows:

6.3.1 Invoice. Provider shall provide a consolidated invoice to Customer on a monthly basis, within a reasonably practicable time after each calendar month end, consistent with the process set forth in Exhibit E. The invoice will include: (i) the output delivery to Customer, (ii) the monthly Calculation related to the applicable kWh Rate, (iii) the total amount to be paid by Customer to Provider for Energy provided in the preceding month, and (iv) the interval meter data used to calculate the invoice.

6.3.2 Payments. Subject to adjustment in accordance with Section 6.3.3, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) calendar days from receipt of the invoice, a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System multiplied by (b) the relevant kWh Rate for Energy relating to the System, which payment shall be in U.S. Dollars and paid by check to Provider or by electronic transfer of immediately available funds to an account designated by Provider.

6.3.3 Invoice Errors. Within thirty (30) calendar days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error in any invoice. Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with Section 6.3.2. If Provider notifies Customer in writing within thirty (30) calendar days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) calendar days of Customer's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) calendar days after such initial meeting; such dispute shall be submitted to mediation in accordance with Section 13.14 of this PPA.

6.3.4 Billing Validation and Verification. During the Term, Customer may, conduct a scheduled billing inquiry and related validation and verification activities or reconciliation procedures (a "Billing Audit") at any time. During such Billing Audit, Provider shall provide Customer with the data and other information, including any billing algorithms and interval Meter data representing System output, used to generate billing determinants. Customer shall notify Provider in writing of desire to conduct a Billing Audit and Provider shall respond within a reasonable period of time. In the event that the Billing Audit identifies necessary adjustments to invoices previously paid by Customer, then the Parties shall use Commercially Reasonable Efforts to resolve such matters requiring adjustment and applicable reimbursement, if any. If the Parties are unable to resolve such matters, such dispute shall be submitted to mediation in accordance with Section 13.14 of

this PPA. Notwithstanding the foregoing, it is not the intention of this Section 6.3.4 to create additional audit rights other than such auditing rights that are required of Customer by Applicable Law, statute or ordinance and this Section is merely intended to provide logistical procedures related to such audit.

6.3.5 Late Payments. All payments hereunder shall be made without setoffs or deduction. Any payment not made within the time limits specified in Section 6.3.2 and Section 6.3.3 shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Provider. Such interest shall accrue at an annual rate of five percent (5%) or, if lower, the maximum interest rate permitted by Applicable Law.

6.4 Adjustments to Contract Price. In the event there is a change in Applicable Law, the result of which is to increase or decrease by five percent (5%) or more Provider's costs to provide the PPA Services, either Party (the "Notifying Party") will promptly submit to the other Party a written notice setting forth: (a) a description of the change in Applicable Law, (b) the manner in which such change in Applicable Law has changed or will materially change Provider's costs to provide the PPA Services, including a reasonable calculation of such change, and (c) the Notifying Party's proposed adjustment to the kWh Rate for the Energy payable by Customer to reflect such expected material changes in Provider's costs. The Parties agree to reasonably, under the facts and circumstances, negotiate an adjustment in the kWh Rate. Notwithstanding the foregoing, a change in Applicable Law related to eligibility of the System under the Financial Incentives shall not be a change in Applicable Law for which Customer will be required to pay a cost increase pursuant to this Section 6.4.

## 7. General Covenants.

7.1 Covenants of Provider. As a material inducement to Customer's execution and delivery of this PPA, Provider covenants and agrees to the following:

7.1.1 General. Provider shall, at Provider's sole expense, operate the System and utilize the Site in a commercially reasonable manner throughout the Term, and maintain the System (including equipment installed by or at the expense of Provider) in good order, condition and repair, and in accordance with Good Utility Practice. Provider warrants that all of its operating and maintenance personnel or contractors will be adequately qualified and trained throughout the Term.

7.1.2 Permits and Approvals. While providing PPA Services, Provider shall use Commercially Reasonable Efforts to obtain and maintain all approvals, consents, licenses, permits, and inspections from relevant Governmental Authorities, utility personnel, and, if Customer is not the owner of the property upon which the System is located, Customer shall use Commercially Reasonable Efforts to obtain and maintain any other agreements and consents required to be obtained from the Site's owner to enable Provider to perform such PPA Services.

7.1.3 Health and Safety. Provider shall use Commercially Reasonable Efforts to maintain the System and the areas of the Site consistent with Good Utility Practice and Applicable Laws pertaining to the health and safety of persons and property.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this PPA. Customer shall have the right, upon reasonable advance written request and notice, to examine all such records as may be necessary for ascertaining the reasonableness and accuracy of any claims by Provider or statements of costs relating to any transaction hereunder.

7.1.5 Notice of Damage. Provider shall promptly notify Customer of any matters Provider is aware of pertaining to any damage to or loss of the use of the Customer's real property or any interest therein, that could reasonably be expected to adversely affect the System.

7.1.6 Liens. Provider shall not directly or indirectly cause, create, incur, assume, permit, or suffer to exist any liens on or with respect to Customer's real property or any interest therein. Provider also shall pay promptly before a fine or penalty may attach to the System any Taxes, charges, or fees of whatever type of any relevant Governmental Authority for which Provider is responsible under Section 6.2. If Provider breaches its obligations under this Section 7.1.6, it shall immediately notify Customer in writing, shall promptly cause such lien to be discharged and released of record without cost to Customer; provided that in the event that Customer had to incur certain costs in connection with the discharge and release of such unauthorized lien, then Provider shall pay Customer's reasonable costs, including the payment of any reasonable attorneys' fees and court costs (at trial or on appeal) incurred in discharging and releasing such unauthorized lien.

7.2 Covenants of Customer. As a material inducement to Provider's execution of this PPA, Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall use Commercially Reasonable Efforts to maintain the Site (other than the fenced in portion of the Site where the System is located) consistent with Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall use reasonable efforts to cooperate with Provider regarding security of the System, including Commercially Reasonable Efforts to monitor any existing alarm systems on the Site, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters Customer is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume, permit, or suffer to exist any liens on the System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to any System any Taxes, charges, or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2. If Customer breaches its obligations under this Section 7.2.4, it shall immediately notify Provider in writing, shall promptly cause such lien to be discharged and released of record without cost to Provider; provided that in the event that Provider is required to incur costs in connection with the discharge and release of such unauthorized lien, then Customer shall pay Provider's reasonable costs, including the payment of any reasonable attorneys' fees and court costs (at trial or on appeal) incurred in discharging and releasing such unauthorized lien.

7.2.5 Consents and Approvals. To the best of Customer's knowledge and ability to determine, Customer is not subject to any agreement or other obligation that would impede or interfere with Customer's ability to perform its obligations under this Agreement and Customer has obtained all consents and approvals required for Customer to enter into this Agreement and fulfill its obligations hereunder. Customer shall use Commercially Reasonable Efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.2.

7.2.6 Maintenance of Interconnection. Customer shall use Good Utility Practice to maintain the interconnection of the facilities to which Energy is delivered hereunder to the electrical grid during the entire Term, except as specifically permitted under this PPA.

7.2.7 Overshadowing and Shading. Notwithstanding any other provision of this PPA to the contrary, the terms of Section 9 of the Easement

Agreement, as may be amended, are incorporated herein by this reference and Customer shall be bound by the terms thereof as if such terms were stated herein.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this PPA. Provider shall have the right, upon reasonable request and notice, to examine all such records as may be necessary for ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.2.9 Customer Utility Revenues. Customer covenants that it shall establish and maintain rates for sales of electricity and related services to its consumers which shall provide to Customer revenues at least sufficient, together with other available funds, to meet its obligations to Provider under this PPA; to pay all other operation and maintenance expenses; to pay all obligations, whether now outstanding or incurred in the future, payable from, or constituting a charge or lien on, the revenues of its municipal electric utility; and to make any other payments required by law.

## 8. Insurance.

8.1 Customer's Insurance. Customer shall maintain the "all-risk" property insurance covering any existing improvements on the Site as of the Effective Date from the Effective Date until the end of the Term. Within thirty (30) calendar days after execution of this PPA and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) calendar days' prior written notice by the applicable insurer in the event of any material modification, cancellation, or termination of coverage. Except as set forth otherwise herein, or to the extent otherwise caused by the negligence or willful acts of the Customer or its employees, agents or contractors, Customer's liability to or through Provider for any damage to Provider's System during the course of performance under this PPA shall be limited exclusively to the coverage provided by the property insurance described in this subsection 8.1.

8.2 Provider's Insurance. Prior to construction on the Site, Provider, at its sole cost and expense, shall insure the System and Provider's activities in connection with this PPA and shall obtain, keep in force, and maintain insurance as follows:

8.2.1 Comprehensive Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

- |       |                             |             |
|-------|-----------------------------|-------------|
| (i)   | Each Occurrence             | \$2,000,000 |
| (ii)  | Personal Injury             | \$2,000,000 |
| (iii) | Excess Liability (Umbrella) | \$5,000,000 |

8.2.2 Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit no less than One Million Dollars (\$1,000,000.) per occurrence.

8.2.3 Worker's Compensation Insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.

8.2.4 Property Insurance, Fire and Extended Coverage Form in an amount sufficient to fully reimburse Provider for the System, including loss of use.

8.2.5 The insurance and the coverage referred to under this Section 8.2 shall be endorsed to include Customer as an additional insured. Provider, upon the execution of this PPA, shall furnish the Customer with certificates of insurance evidencing compliance with the requirements of this Section. Such certificates shall provide for thirty (30) calendar days' advance written notice to Customer of any material modification, change or cancellation of the above insurance coverages.

8.2.6 The minimum limits of insurance coverage required in this Section 8.2 shall be adjusted as follows: whenever the cumulative increase in the Consumer Price Index from the Effective Date, or from the last adjustment of insurance limits, increases by more than 35% (as reasonably determined by Provider), then the minimum limits of insurance required herein shall be increased by the same percentage.

9. Force Majeure Events. If either Party is directly prevented from or delayed in performing any of its obligations under this PPA by reason of a Force Majeure Event, such Party shall notify the other Party in writing within 48 hours after the onset of such Force Majeure Event of (i) the precise cause claimed to constitute the Force Majeure Event and the date and time of its onset, (ii) the efforts being deployed or expected to be deployed on behalf of the Party claiming disability from performance to eliminate or mitigate the claimed Force Majeure Event, and (iii) the anticipated duration of the Force Majeure Event. Provided written notice is given



in accordance with this Section 9, the affected Party shall be temporarily excused from the performance of its obligations under this PPA to the extent that such Force Majeure Event has directly interfered with such performance. The Party whose performance under this PPA is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this PPA is directly due to a Force Majeure Event, then such temporary failure to perform shall not be deemed a Default under this PPA, so long as the Party seeks to perform after such Force Majeure Event is no longer directly preventing the Party from performing its obligations. The continuation of a Force Majeure Event that disables a Party from performance of its obligations under this PPA for a period of 180 consecutive days or longer shall constitute grounds for termination of this PPA, without default or liability on the part of the terminating Party. Notwithstanding anything in this Section 9 to the contrary, no payment obligation of either Party under this PPA shall be excused or delayed as the result of a Force Majeure Event.

10. Term.

10.1 Term. The term of this PPA shall commence on the Effective Date and shall end at 11:59 P.M. (Ohio time) on the day that is thirty (30) years after the Commercial Operation Date (the "Term"), provided that, upon the mutual written agreement of the Parties, the PPA may be extended for two (2) additional five (5) year renewal terms. Hereinafter, a "Termination Date" shall occur on the day immediately following the end of the Term, unless this PPA is earlier terminated by a Party pursuant to the terms of this PPA or the Easement Agreement, in which case the Termination Date shall occur on such date. For the sake of clarity, this PPA shall terminate upon a proper termination of the Easement Agreement pursuant to its terms and conditions.

10.2 Indemnity for Compliance with Applicable Laws.

- 10.2.1 Provider shall, to the extent permitted by Applicable Law, indemnify and hold harmless the Customer and its employees, officers and representatives for costs, liabilities and expenses Customer may incur as a direct result of the Provider's failure to comply with Applicable Laws in connection with this PPA; provided that Provider's indemnity obligations hereunder shall first be satisfied by applicable insurance and then, thereafter, shall in no event exceed the initial dollar value of the System when placed in service.

- Provider shall not be responsible for indemnifying Customer for any costs, liabilities, or expenses arising from improper acts taken by Customer, or any of Customer's officers, employees, agents, or consultants. 10.2.2 Provider and its

affiliates shall indemnify and hold Customer harmless from all costs, including the costs of litigation, arising from any claim by anyone asserting that Provider, or any of Provider's officers, employees, agents, or consultants, is legally prohibited from undertaking this project or entering this PPA or seeking damages associated with such an arrangement.

• 10.2.3 Customer and its affiliates agree that Provider shall not be responsible for any costs, including the costs of litigation, arising from any claim by anyone asserting that Customer, or any of Customer's officers, employees, agents, or consultants, is legally prohibited from undertaking this project or entering this PPA or seeking damages associated with such an arrangement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Removal of System. In the event Customer elects not to purchase the System as provided in this PPA, Provider, at its sole cost, shall remove all requested tangible property comprising the System from the Site and restore the Site to its original condition (except that any electric/wiring components located underground at a depth of at least three feet may be left in place), ordinary wear and tear excepted, within one hundred eighty (180) calendar days after the Termination Date (or expiration of the Term) of this PPA; *provided, however*, that notwithstanding any other term of this PPA, in the event that this PPA is terminated for reasons attributable to Customer, including but not limited to a Customer Default, and such termination results in a dispute between Customer and Provider, Provider shall have no obligation to remove the System from the Site prior to the resolution of such dispute. If Provider fails to remove all tangible property comprising the System from Site within such one hundred eighty (180)-day period, then Customer shall have the option of removing the facilities at Provider's sole cost, and if Provider does not, within a reasonably practicable period, reimburse Customer for such removal costs, then Customer shall be entitled to reimbursement through the performance guarantee established by Provider pursuant to the terms and conditions hereof.

10.3.2 Customer Purchase Option Prior to Termination Date. So long as no Customer Default shall have occurred and be continuing and Customer shall have paid any and all amounts owed to Provider under this PPA, Provider grants to Customer an option to purchase the System (the "Purchase Option"), exercisable during the five (5)-Business Day period following each of the tenth (10th), fifteenth (15th), twentieth (20th), twenty-fifth (25th), and thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date with respect to the System for an amount equal to the Option Price. Customer shall give written notice to Provider of its intent to exercise its Purchase Option no later than the end of the five (5)-day exercise period

described in the previous sentence. "Option Price" means an amount equal to the greater of: (a) the Buyout Amount for the year in which the Purchase Option relates to as set forth in Exhibit G, or (b) the Fair Market Value of the System as of the date of the anniversary of the Commercial Operation Date to which the Purchase Option relates. Upon Customer's payment of Option Price, Provider shall transfer title to the System on an as-is, where-is basis by means of a bill of sale, this PPA shall terminate, and Customer shall accept assignment of any applicable interconnection agreement and easement agreement for the System. For purposes of this Section, "Fair Market Value" shall be the value determined by the mutual agreement of Customer and Provider (using nationally recognized appraiser methods) within ten (10) Business Days after receipt by Provider of Customer's notice of its election to purchase the System. In the event the Parties fail to agree on the Fair Market Value within such ten (10) Business Day period, Customer's exercise of the Purchase Option shall be revoked, Customer shall not purchase the System, and this PPA shall continue in accordance with its terms.

10.3.3 Payment of Termination Amount on Termination Date. Except in the event that Customer exercises its Purchase Option pursuant to Section 10.3.2 above, if a Termination Date occurs for reasons attributable to Customer and not otherwise authorized by this PPA, including as a result of a Customer Default, Customer shall be required to pay to Provider the then-applicable Termination Amount. The Parties agree that the applicable Termination Amount is a reasonable approximation of the damages and an amount certain suffered by Provider as a result of early termination of this PPA and should not be considered a penalty, or "debt" for any applicable "debt limitation" concept. If a court of competent jurisdiction determines that the Termination Amount or its application is void or unenforceable, the Provider shall be entitled to recover its actual damages incurred as a result of the early termination of this PPA.

10.3.4 Provider Termination. Provider shall have the right, upon written notice given in Provider's sole and absolute discretion, to terminate this PPA: (i) at any time until construction of the System commences; (ii) if the occurrence of an un-stayed order of a court or administrative agency has the effect of subjecting the sales of Energy to federal or state regulation of prices and/or service; (iii) upon elimination or alteration of one or more Financial Incentives or other change in law that results in a materially adverse economic impact on Provider; (iv) if a Customer Default occurs (as defined below); (v) if Host Hazardous Materials are present at the Site as set forth in Section 4.6; and (vi) if a breach by the Customer under the Easement Agreement occurs.

## 11. Defaults.

11.1 Customer Default. The occurrence at any time of any of the following events shall constitute a "Customer Default" (unless excused by a Force Majeure Event pursuant to the terms hereunder):

11.1.1 Payment Default. The failure of Customer to make a timely payment to Provider hereunder; provided, however, that Customer may cure each such failure within sixty (60) calendar days from the date that the payment was due;

11.1.2 Failure to Obtain Approval of the PPA. The failure of Customer to obtain approval of this PPA from any Governmental Authority, including any state public utility commission if required under Applicable Law, which materially affects the enforceability of any provision hereunder.

11.1.3 Other Defaults. The failure of Customer to perform or cause to be performed any other obligations required to be performed by Customer under this PPA, or the failure of any representation and warranty set forth herein to be true and correct as and when made, provided that such failure results in a materially adverse effect on Provider, or the filing or permitting of filing by the Customer of a lien or encumbrance on the System; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of fifteen (15) Business Days after receipt of written notice from Provider of such failure of Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for forty (40) additional calendar days.

11.1.4 Insolvency Default. (a) Customer as a matter of fact is unable to pay its debts generally as they become due or is "insolvent" as such term is generally interpreted under Ohio law; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets; or

11.1.5 Easement Default. A material breach of the Easement Agreement by the Customer occurs or the Customer otherwise vacates or sells the Site property, as applicable.

11.2 Provider Default. The occurrence at any time of the following events shall constitute a "Provider Default" (unless excused by a Force Majeure Event pursuant to the terms hereunder):

11.2.1 Performance Default. The failure of Provider to perform or cause to be performed any of its obligation hereunder or, as of the date hereof, the failure of any representation and warranty set forth herein to be true and correct provided that such failure results in a materially adverse effect on Customer; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of fifteen (15) Business Days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for forty (40) additional calendar days;

11.2.2 Insolvency Default. (a) Provider as a matter of fact is unable to pay its debts generally as they become due or is "insolvent" as such term is generally interpreted under Ohio law; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets; or

11.2.3 Easement Default. A material default by Provider under the Easement Agreement occurs and such default is not cured within the time period provided for in Easement Agreement.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. In addition to other remedies available under this PPA or at law, if a Provider Default as described in Section 11.2 above has occurred, then Customer may terminate this PPA by written notice, without penalty or liability to Provider, and this PPA shall be of no further force or effect as of the date ("Expiration Date") the termination notice is given. Upon such termination, the terms of Section 10.3.1 shall apply.

12.2 Provider's Remedies Upon Customer Default. In addition to any other remedies available under this PPA or at law, if a Customer Default as described in Section 11.1 has occurred, then Provider may terminate this PPA by written notice to Customer and shall have the right to cause Customer to pay the applicable Termination Amount and the right to remove the System. In addition to the foregoing, in the event this PPA is terminated by Provider under this Section 12.2, Customer shall pay 100% of the reasonable expenses of Provider incurred in connection with removing the System. Within thirty (30) Business Days of receiving an invoice from Provider, Customer shall pay to Provider the amounts set forth on the invoice; provided, however, that Provider will have no obligation to remove the System until Customer has paid the Termination Amount as set forth in this Section 12.2.

12.3 Abandonment. In the event Provider fails to remove the System pursuant to Provider's obligations hereunder and thirty (30) additional Business Days have passed after Customer has notified Provider in writing that it has failed to comply with its removal obligations under the PPA without reasonable response by Provider, the System shall be deemed to be abandoned and Customer, if otherwise consistent with the terms and conditions of this PPA, may remove and store, or dispose of the System and Provider shall pay Customer reimbursement for its reasonable costs associated with such removal and disposal of the System.

12.4 No Consequential Damages/Termination Amount. Neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability, all claims for which are hereby irrevocably waived by Customer and Provider.

Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as payable by Customer to Provider under the terms of this PPA upon the termination of this PPA, including the Termination Amount, shall be deemed consequential damages. The Parties agree that the applicable Termination

Amount is a reasonable approximation of the damages suffered by Provider as a result of early termination of this PPA. If a court of competent jurisdiction determines that the Termination Amount or its application is void or unenforceable, the Provider shall be entitled to recover its actual damages incurred as a result of the early termination of this PPA. Accordingly, in the event that the Termination Date for the System has occurred without a Provider Default and as a result of Customer Default prior to the end of the Term (or any extension thereof), Customer shall be required to pay to Provider the then-applicable Termination Amount with respect to the System. Absent fraud or intentional misconduct, payment of the Termination Amount to Provider shall be Provider's sole remedy in the event that this PPA terminates because of Customer Default.

12.5 Effect of Termination of PPA. Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this PPA shall be terminated (other than the obligations set forth in Section 6.2 of this PPA related to responsibility for Taxes). Notwithstanding the foregoing, such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

13. Miscellaneous Provisions.

13.1 Notices. All notices, communications and waivers under this PPA shall be in writing and shall be: (a) delivered in person, or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties shall designate in a written notice to the other Party, or (d) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgment), addressed as follows:

If to Provider:

If to Customer:

Copy to:

All notices, communications and waivers to Customer's lenders or other financiers under this PPA shall be to the name and address specified in a notice from Customer to Provider. All notices sent pursuant to the terms of this Section 13.1 shall be deemed received: (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight express courier, then on the next Business Day immediately following the day sent, (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) Business Day following the day sent or when actually received, or (iv) if by e-mail, then on the date that such transmission is specifically acknowledged by the recipient (not including automatic responses).

Customer agrees that in the event of any claimed material breach or default by Provider of this PPA, which, if uncured, would result in termination of the PPA, then Customer shall concurrently and simultaneously provide Provider's lender (or any of its identified successors or assigns) with any written notifications to Provider which memorialize any such potential or actual material breach or default under this PPA. All notices to Provider's lender shall be in writing and shall be mailed, postage prepaid, either by registered or certified mail, return receipt requested. On the date hereof Provider shall distribute written notification to Customer of the specifics of Provider's lender and its address (with a copy correspondence to such lender), which Provider may update by written notice from time to time.

### 13.2 Party Representations and Warranties.

13.2.1 Provider Representations. Provider hereby represents and warrants that:

(a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Ohio and has all requisite of the power and authority to enter into this PPA and the Easement Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby;

(b) The execution and delivery of this PPA and the Easement Agreement and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary action of the Provider's entity and, to the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the authorization, execution and delivery of this PPA and the Easement Agreement by Provider;



(c) Each of this PPA and the Easement Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however that the enforcement of the rights and remedies herein is subject to bankruptcy and other similar laws of general application affecting rights and remedies of creditors; and

(d) The execution and delivery of this PPA and the Easement Agreement by Provider and the compliance by Provider with the terms hereof do not conflict with, breach or contravene the provisions of the charter and/or organizational documents or operating agreement of Provider or any material contractual obligation of Provider.

13.2.2 Customer Representations. Customer hereby represents and warrants that:

(a) It is an Ohio municipal corporation duly organized, validly existing and has all requisite constitutional and statutory power and authority to enter into this PPA and the Easement Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby;

(b) The execution and delivery of this PPA and the Easement Agreement and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary charter, ordinance, constitutional, and statutory requirements and approvals and no governmental approval (other than any governmental approval which has been previously obtained or disclosed in writing to Provider) and no other consent, action or approval is required in connection with the authorization, execution and delivery of this PPA and the Easement Agreement by Customer or the performance by Customer of its obligations hereunder and thereunder which Customer has reason to believe that it will be unable to obtain in due course;

(c) Each of this PPA and the Easement Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to bankruptcy and other similar laws of general application affecting rights and remedies of creditors,

(d) Neither the execution and delivery of this PPA by Customer nor compliance by Customer with any of the terms and provisions of this PPA conflicts with, breaches or contravenes the provisions of the organizational

documents of Customer or applicable Ohio law or any contractual obligation of Customer;

(e) To the best knowledge of Customer, there are no existing amounts of regulated hazardous materials that are currently located at the Site;

(f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by Provider under this PPA;

(g) The obligations of the Customer pursuant to the provisions of this PPA which require the expenditure of funds do not constitute a general obligation or indebtedness of the Customer within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate the Customer to make any expenditure unless the expenditure has been duly budgeted, if and to the extent required by law, and is within all budget and expenditure limitations of and is not in conflict with any state or federal limitations to which the Customer is subject; and

(h) The Customer represents, warrants and covenants that: (i) it has complied with all bidding and budgeting requirements where necessary and this PPA and the Easement Agreement are each a valid obligation on its part and that all requirements have been met and procedures have been followed to ensure the enforceability of the PPA and the Easement Agreement subject to bankruptcy, insolvency and similar laws and to the exercise of judicial discretion and (ii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

13.3 Assignment. Customer shall not assign this PPA or the Easement Agreement without the prior written consent of Provider and any such attempted assignment shall be void ab initio. Provider may, subject to the prior written consent of Customer, which consent shall not be unreasonably withheld or delayed, assign, transfer, mortgage, pledge or otherwise collaterally assign its interests in this PPA to any third party. Notwithstanding the foregoing, Provider may assign this PPA in connection as part of a financing transaction for the System without Customer's consent. Any permitted assignee must assume and agree to be bound by all of the obligations, liabilities, and duties of the assigning Party under this PPA and the related Easement Agreement.

13.4 Successors and Assigns. The rights, powers and remedies of each Party shall inure to the benefit of such Party and its successors and permitted assigns.

13.5 Amendments to PPA. This PPA shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

13.6 Waivers; Approvals. No waiver of any provision of this PPA shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this PPA, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this PPA, such Party may at any time after such failure exercise all rights and remedies available under this PPA with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this PPA must be in writing, signed by the Party whose approval is being sought.

13.7 Partial Invalidity. In the event that any provision of this PPA is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this PPA and the related Easement Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this PPA) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

13.8 Execution in Counterparts. This PPA may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same PPA.

13.9 No Agency. This PPA is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party. Each Party shall be responsible for payment of all wages, compensation, and benefits to its employees, agents, contractors and/or subcontractors, and shall pay and file all payroll taxes for its employees, agents, contractors and/or subcontractors required by Applicable Law.

13.10 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer, or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

13.11 Cooperation with Financing and Certification with Governmental Authority. Customer acknowledges that Provider may be financing the System and requires the Financial Incentives in financing the System. Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing and acquiring the Financial Incentives, including: (a) the furnishing of information, (b) the giving of certificates and additional agreements within Customer's authority to do so, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request; *provided, however*, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this PPA. It is the intent of the Provider to apply for and receive a grant (the "Cash Grant") from the United States Treasury Department pursuant to Section 1603 of the American Recovery and Reinvestment Act (the "ARRA") or apply for and receive an investment tax credit pursuant to Code Section 48 (the "ITC") as part of the financing of the System. The Customer agrees that it has no interest whatsoever in the Cash Grant or the ITC. The Customer also agrees to cooperate to the extent requested by the Provider so that the Provider or its affiliate can obtain such Cash Grant or the ITC or defend any action with respect to any disallowance, reduction, or recapture of the Cash Grant or the ITC which cooperation includes but is not limited to making the Customer's employees, contractors, or other service providers available to the Provider, executing necessary documents requested by the Provider (provided Customer has the legal authority to do so), and providing any necessary information whether written or verbal to the Provider. In addition, the Customer agrees to reasonably cooperate with Provider, to the extent Provider determines to make any certification filing with a Governmental Authority in connection with the power production and sales under this PPA and Provider requires reasonable assistance from Customer in connection with such certification to such Governmental Authority.

13.12 Financing Party Rights. The Parties acknowledge that Provider may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "Financing Party") in connection with the installation,

construction, ownership, operation and maintenance of the System. In furtherance of Provider's financing arrangements and notwithstanding anything to the contrary contained in the PPA, the Parties hereby agree as follows:

13.12.1 Notice to Financing Parties. If Provider has notified Customer of a Financing Party and provided Provider with an address for notices to such Financing Party, then Customer shall deliver to such Financing Party a copy of all notices Customer sends to Provider, concurrently with delivery of such notices to Provider.

13.12.2 Cure by Financing Parties. Each Financing Party shall have the right and opportunity to cure any Default on behalf of Provider within the applicable cure periods provided to Provider plus thirty (30) days. If a Financing Party elects to cure but cannot remedy a Default in such period, then Customer shall provide such Financing Party an additional reasonable extension of time to so cure (not to exceed ninety (90) days in total from the date of Notice of Default), provided that such Financing Party undertakes actions to cure such Default within the required period and thereafter diligently and continuously prosecutes such cure to completion. The commencement and pursuit of a judicial or non-judicial foreclosure proceeding by such Financing Party shall be deemed commencement of a cure. Customer shall accept the cure of a Default as if Provider had cured the Default itself. Nothing in this Section 13.12.2 shall be construed as requiring any Financing Party to cure any Default on behalf of Provider.

13.12.3 Foreclosure by Financing Parties. In the event of a foreclosure or seizure of Provider's rights with respect to the System and/or this Agreement by a Financing Party, Customer agrees to permit such Financing Party or its transferee to exercise any and all rights of Provider under this Agreement, so long as such Financing Party or its transferee shall tender performance of Provider's obligations under this Agreement (including the obligation to cure any defaults or events of default which may then exist and remain uncured hereunder) from and after the date of any such foreclosure or exercise of rights. In such event, Customer agrees that it will, upon request by such Financing Party, and subject to such Financing Party's demonstration to the reasonable satisfaction of Customer that such change in counterparty does not have a material adverse effect on the creditworthiness or ability of such substitute counterparty to perform the Seller's obligations under this Agreement, enter into a new power purchase agreement with such Financing Party or its nominee for the remaining portion of the Term, upon the same terms and conditions as set forth in this Agreement without interruption and for no additional consideration from Financing Party.

13.12.4 Execution of Financing Related Documentation. In furtherance of Provider's financing arrangements and in addition to any other rights or entitlements of Provider under this Agreement, Customer shall timely execute such reasonable and customary consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate such amendments to this Agreement as may be reasonably requested by Provider or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not adversely affect the economic position of the Customer under this Agreement or otherwise alter the fundamental economic terms of this Agreement.

13.13 Choice of Law. This PPA shall be construed in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles.

13.14 Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this PPA, or the related Easement Agreement, or the breach hereof or thereof, that has not been resolved by informal discussions and executive-level negotiations, either Party may take whatever action it deems appropriate to seek resolution of the matter after forty (40) Business Days of unsuccessful negotiation has passed; provided, however, either Party may, during said forty (40)-Business Day period, request the utilization of the services of a professional mediator (chosen by mutual agreement of the Parties), and the other Party shall cooperate with such request and share equally the reasonable costs of such non-binding mediator (upon which time the forty (40)-Business Day period shall be reasonably extended to provide the mediator adequate time to attempt to resolve such dispute). The mediation shall take place in the State of Ohio and the decision of the mediator in the matter shall be non-binding. No mediator shall serve as an arbitrator or witness in any arbitration or litigation between the Provider and the Customer. Any information disclosed to the mediator but not to the other Party shall be confidential and shall not be subject to disclosure by the mediator in any arbitration or litigation between the Provider and the Customer. If any legal action or claim shall be instituted in a court of law between Customer and Provider in connection with this PPA or the related Easement Agreement, each Party shall pay its own costs and fees (including attorneys' fees) in connection with such legal proceeding.

13.15 Unresolved Finding for Recovery. Provider represents, as of the date hereof, that it is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that Provider has taken the appropriate remedial steps required under ORC 9.24, or otherwise qualifies under ORC 9.24.

13.16 Right to Setoff. In the event of either Party's insolvency, amounts owed by one Party to the other Party shall be deemed to be a "mutual debt" subject to setoff under 11 U.S.C. Section 553.

13.17 Labor Code Compliance. Provider shall comply and shall ensure that all of its contractors and subcontractors comply with all applicable provisions of Ohio labor law, in effect at the time of the installation and construction of the System, including Ohio Revised Code chapter 4115 with respect to the general prevailing wage rates for each craft, classification, or type of worker required to install the System.

13.18 Entire Agreement. This PPA (including all exhibits attached hereto), the Interconnection Agreement, and the Easement Agreement represent the entire and integrated agreement between the parties to this PPA with respect to the subject matter hereof and thereof and supersede all prior oral and prior written agreements. In the event of any conflict between the provisions of this PPA and the provisions of the Interconnection Agreement or the Easement Agreement, the provisions of this PPA shall govern and control, and termination of this PPA shall concurrently terminate the Interconnection Agreement and Easement Agreement (provided that the Easement Agreement will survive for 180 (one hundred eighty) days after such termination).

#### 14. Confidential Information.

Each Party (the "Receiving Party") shall not use for any purpose other than performing its obligations under this PPA or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any Confidential Information of the Disclosing Party. The Receiving Party shall use a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party as required by Ohio public records laws or any court or other Governmental Authority or its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) Business Days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps (any or all of which shall be at Provider's own cost, including reimbursing the Receiving Party for any reasonable legal fees or Governmental Authority penalties assessed against the Receiving Party relating to the Receiving Party's non-disclosure of the Confidential Information) to oppose such disclosure or seek a protective order to prevent such

disclosure. Information about the System constitutes Confidential Information and is subject to this Section 14.

[SIGNATURE PAGE FOLLOWS]



The Parties hereto have duly executed and delivered this PPA as of the date first written above.

PROVIDER:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CUSTOMER:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A:**

**SYSTEM DESCRIPTION**

## SYSTEM SIZE CERTIFICATION

To Each Party to the Power Purchase Agreement (the "PPA") dated \_\_\_\_\_,  
2025, by and between \_\_\_\_\_ and \_\_\_\_\_.

Pursuant to Exhibit A of the PPA, I hereby agree and certify that the undersigned  
have definitively determined the solar system size for such PPA is set at \_\_\_\_ MW  
in inverter AC nameplate capacity.

Signature of Customer: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Provider: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B:**

**SITE DESCRIPTION**

**EXHIBIT C:**

**FORM OF EASEMENT AGREEMENT [SEE ATTACHED]**

## **EXHIBIT D:**

### **DEFINITIONS**

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority or court of competent jurisdiction.

"Business Day" shall mean a calendar day other than Saturday, Sunday or a legal holiday in the State of Ohio.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended.

"Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted, or taken by Customer or Provider under this Agreement, such efforts as a reasonably prudent business of similar characteristics and operating within the same industry as the applicable Party, would undertake under the circumstances for the protection of its own interest, including the amount of notice of the need to take such action, the duration and type of action, the competitive environment in which such action occurs, and the risk to the Party required to take such action. With respect to price or cost, Commercially Reasonable means the price or cost obtained or reasonably expected to be obtainable given good faith efforts in a competitive business environment, and that a reasonably prudent business of similar characteristics and operating within the same industry as the applicable Party, would undertake under the circumstances for the protection of its own interest. The price or cost obtained need not necessarily be the lowest or highest (as the case may be) price or cost available at the time so long as such price or cost can be demonstrated to have been reasonably obtained through good faith efforts in a competitive business environment. Commercially Reasonable Efforts shall not generally require the payment of fees not otherwise contemplated under this Agreement nor the making of any material financial or other concessions as a condition to accomplishing the result contemplated.

"Confidential Information" includes, without limitation, all information or materials prepared in connection with this PPA and the Easement Agreement including, but not limited to, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or

marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party; or (d) any document that is subject to the Ohio public records laws.

“Environmental Attributes” shall mean all attributes (environmental or other) that are created or otherwise arise from the System’s generation of electricity using sunlight as a fuel in contrast to the generation of electricity using nuclear or fossil fuels or non-renewable resources, including, but not limited to, renewable energy credits, solar renewable energy credits, tags, certificates or similar products or rights associated with solar as a “green” or “renewable” electric generation resource. These attributes include all local, state or federal credits, allowances, offsets and similar rights issued, recognized, created or otherwise arising from the photovoltaic Generating Facility, Energy, or the delivery of the Net Energy to Buyer, which can be used to claim responsibility for any avoidance or reduction of emissions or pollutants, including, but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other program. Notwithstanding the foregoing, the term “Environmental Attributes” shall not include investment tax credits within the meaning of Section 48 of the Internal Revenue Code or any successor provision of comparable scope and applicability to such section.

“Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under any federal state or local renewable energy program or initiative, (ii) any utility rebates, incentives, state-funded monetary assistance originating from state legislation or local other funding offered for the development of renewable energy or solar projects, (iii) any incentive tax credits (including the ITC or the Cash Grant), other tax benefits, and tax depreciation, and (iv) any rebates, incentives, or other types of tax or financial benefits. Notwithstanding the foregoing, the term “Financial Incentives” does not include RECs or Environmental Attributes.

"Force Majeure Event" shall mean any event that: (1) is outside the control and without fault or negligence of a Party claiming that such event has occurred, (2) could not have been avoided through the exercise of reasonable prudence and planning consistent with the Good Utility Practice, and (3) directly and actually causes delay(s) in or prevents a Party's performance or completion of critical work. Examples of the foregoing may include: (i) war, riot, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, tsunamis, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this PPA; and (iii) strikes, walkouts, lockouts or similar industrial or labor actions or disputes. Notwithstanding anything herein to the contrary, (i) a lack of or reduction in the amount of sunshine, (ii) economic hardship, (iii) any failure to secure or maintain permits, except to the extent caused by a separate Force Majeure Event, and (iv) inability to obtain or maintain any expected tax benefits shall not be considered a Force Majeure Event.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of constructors, owners and operators of solar photovoltaic systems of a type and size comparable to the System during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region by constructors, owners and operators of solar photovoltaic systems of a type and size comparable to the System.

"Governmental Authority" shall mean any federal, state, regional, county, township, village, Village, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Installer" means any person designated by Provider in accordance with this PPA to install the System on the Site.



“Investment Tax Credit” means that credit against liability for federal income tax provided under 26 U.S.C. § 48, as the same may be amended from time to time during the term of this PPA.

"Monthly Period" shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date Occurs, and, thereafter, all subsequent one (1)-month periods during the Term.

"Monthly Production" shall mean, for each Monthly Period, the amount of Energy delivered to the Interconnection Point during such Monthly Period, net of energy delivered by Customer to the Interconnection Point during such Monthly Period.

"Party" shall have the meaning set forth in the preamble to the PPA.

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“PPA Services” shall mean the production and delivery of electricity from the System to the Interconnection Point in accordance with the terms of this PPA.

"Provider" shall have the meaning set forth in the preamble to the PPA. For purposes of access rights and other rights necessary for Provider to perform its obligations hereunder, the term "Provider" shall include Provider's authorized agents, contractors and subcontractors.

"RECs" means renewable energy credit(s) or certificates, emission reduction credits, investment credits, production tax credits, emission allowances, green tags, tradable renewable credits, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of renewable energy attributed to the Energy produced by the System under any reporting program adopted by a governmental authority, or for which a registry and a market exists or for which a market may exist at a future time.

"Reporting Rights" means the right of Customer to report to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Customer owns the RECs associated with the Energy.

“Termination Amount ” shall mean, for each calendar year, that certain amount set forth in Exhibit F related to any date of determination for the System.

**EXHIBIT E:**

**PRICING**

The Customer will pay monthly for Energy, capacity and Environmental Attributes delivered by and associated with the System at the fixed rate of \$\_\_\_\_\_/kWh through the Termination Date of this PPA.

The currency set forth above shall be in United States dollars. Such pricing does not reflect potential increases or decreases in pricing as a result of other terms and conditions of the PPA, including but not limited to a change in price due to a change in Applicable Law pursuant to Section 6.4.

**EXHIBIT F:**  
**TERMINATION AMOUNT**

"Termination Amount" shall mean, on any date of termination for the System, an amount equal to the sum of:

- the costs of dismantling, packing, removing and transporting the System; and
- if Provider has begun construction of the System, the value of any Financial Incentives that would have accrued to Provider if the termination of this PPA did not occur;
- the value of any reduction or recapture of any Financial Incentives (including penalties assessed in connection with such reduction or recapture);
- if Provider has begun construction of the System, the Remaining Contract Value; and
- if Provider has not begun construction of the System, all costs and expenses of Provider, and all fees, penalties, termination payments and damages Provider must pay under any contracts to which Provider is a party in relation to the System.

"Remaining Contract Value" shall mean, upon any termination of this PPA, the present value of Customer's Energy purchase obligations for the remaining portion of the Term, which shall be calculated as follows: the number of days remaining in the Term of this PPA times the product of: (x) the kWh Rate Customer would otherwise pay for such Energy multiplied by (y) the Average kWh Output.

"Average kWh Output" means the daily average number of kWh of Energy actually delivered to Customer from the System beginning on the Commercial Operation Date through the date of termination of this PPA. If termination of this PPA occurs prior to the date that is one full year after the Commercial Operation Date, for purposes hereof, it shall be assumed that the "Average kWh Output" of the System during such partial year was the expected daily number of kWh of Energy, calculated by dividing the "Estimated Year 1 Production" for the System by 365. For purposes of this definition, the "Estimated Year 1 Production" will be reasonably calculated by Provider, taking into account the rated capacity of the system and an annual degradation factor at 0.6 percent (per year). The present value discount rate shall be equal to the prevailing prime rate of interest as published in The Wall Street Journal on the day preceding the date of termination of this PPA.



**EXHIBIT G:**

**BUYOUT AMOUNT\***

Year 10        \$

Year 15        \$

Year 20        \$

Year 25        \$

Year 30        \$

**EXHIBIT H:**

**SITE PLAN**

Attachment III

# **STANDARD EA**

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“*Easement Agreement*”), dated as of \_\_\_\_\_, 2025 (the “*Effective Date*”), is made by and between the BMU of Bryan, Ohio, an Ohio municipality (“*Grantor*”), and \_\_\_\_\_, (“*Grantee*”) (together, Grantor and Grantee are the “*Parties*”). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the PPA (as defined below).

WITNESSETH

WHEREAS, Grantee and Grantor are party to that certain power purchase agreement, dated as of the same date as the Effective Date of this Agreement (the “*PPA*”), pursuant to which Grantee has agreed to provide Grantor with the certain services pursuant to the terms and conditions of the PPA, as more fully described in the PPA (the “*PPA Services*”).

WHEREAS, Grantor is the fee simple owner of certain real property located in the City of Bryan, Williams County, Ohio, the legal description of which is in **Schedule 1**, attached hereto and incorporated by reference herein (the “*Property*”).

WHEREAS, in order to provide the PPA Services and construct, install and operate the System (as defined in the PPA), Grantee requires access to the Property.

WHEREAS, in connection with the foregoing, Grantor desires to grant to Grantee an easement for portions of the Property in order to provide for the construction, installation and operation of the System and for ingress and egress over such portions of the Property as are necessary thereto.

WHEREAS, Grantor and Grantee desire to provide record notice of the PPA as set forth in this Easement Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Grantee and Grantor hereby agree as follows:

1. PPA Acknowledgement. Grantee and Grantor hereby acknowledge the binding existence and terms and conditions of the PPA and that this Easement Agreement was executed in order to permit and facilitate Grantee’s performance of the PPA Services. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the PPA.

2. Term and Termination. The term of this Easement Agreement shall commence on the Effective Date and terminate thirty (30) years plus 180 (one hundred eighty) days after the Effective Date, unless the Parties hereto agree in writing to extend the Term for up to two (2) additional five (5) year renewal terms; provided that if the PPA has terminated prior to the commencement of installation of any portion of the System and all amounts owed to Provider under the PPA have been paid by Grantor to Grantee, this Easement Agreement shall terminate on the date on which the PPA terminates plus one hundred eighty (180) days. Upon Grantee’s Default under the terms of the PPA, Grantor may terminate this Easement Agreement. Grantor and Grantee agree to execute a termination of this Easement Agreement promptly following any proper termination of this Easement Agreement.

3. Record Notice. In addition to the grant of the easement rights stated herein, this Easement Agreement is intended to give notice of the PPA and its terms, covenants and conditions. A copy of the PPA is in the possession of both Grantor and Grantee. Reference shall be made to the PPA for all terms,



covenants and conditions not set forth herein. This Easement Agreement shall not modify in any manner the terms, conditions or intent of the PPA.

4. Grant of Easement. Grantor hereby grants to Grantee, Lender (defined below) and their employees, agents, contractors and subcontractors (collectively, the “**Grantee Permittees**”) a continuous easement as set forth in **Schedule 2** to this Agreement for the Term to enter upon and use that portion of the Property more particularly described on the attached **Schedule 2** (the “**Easement Area**”) for the purposes of accessing, constructing, maintaining, operating, monitoring, repairing, replacing, decommissioning and removing the System and providing the PPA Services. Each party (an “**Indemnifying Party**”) shall, to the extent permitted by Applicable Law, indemnify and hold harmless the other party and its employees, officers and representatives (an “**Indemnified Party**”) for damages or liabilities such Indemnified Party may incur as a direct result of a Indemnifying Party’s negligent actions in connection with this Easement Agreement; provided that each Indemnifying Party’s indemnity obligations hereunder shall first be satisfied by applicable insurance of either party and then, thereafter, shall in no event exceed the initial dollar value of the System when placed in service; *provided, however*, that, except as explicitly set forth in this Agreement or the PPA, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

5. Easement Area Conditions. Grantor represents and warrants to Grantee that Grantor is unaware of any site conditions or construction requirements: (a) that would materially increase the cost of installing the System at the planned locations on the Easement Area or would materially increase the cost of maintaining the System over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System, or (b) that would adversely affect the ability of the System as designed to produce electricity once installed.

6. Access to Easement Area.

- a. Grantor hereby grants to the Grantee Permittees a temporary right from time to time to use those portions of the Property as are reasonably necessary or convenient and that do not substantively interfere with Grantor’s use of the Property for: (i) access to the System or Easement Area including driveways, curb cuts, parking lots and access easements; (ii) construction staging for the System; (ii) parking of construction crew vehicles and trailers; (iii) construction, maintenance, operation, monitoring, repair, replacement, decommissioning and removal of the System; (iv) providing connections between the System and electrical utilities; and (v) access to the Easement Area with guests for promotional purposes.
- b. Grantor shall use commercially reasonable efforts to provide sufficient space for temporary storage and staging reasonably necessary during the construction, installation, testing, commissioning, decommissioning and removal of the System.
- c. Notwithstanding anything to the contrary in Section 6(a) below, Grantee specifically acknowledges and agrees that, except in the case of emergencies, any access to the Easement Area by the Grantee Permittees pursuant to this Easement Agreement shall be scheduled with Grantor in advance and shall be subject to Grantor’s then current written policies and procedures relating to security and safety; provided that Grantor provides such policies and procedures to Grantee in advance.
- d. Grantee shall use, and shall cause the other Grantee Permittees to use, commercially reasonable efforts to minimize interference to the use and occupancy of the Property by Grantor during maintenance and repair work performed by Grantee.

7. System Construction, Installation, Operation and Removal.

- a. Grantor hereby consents to the construction and installation of the System on the Easement Area, including, without limitation, solar panels, physical connection to the Property

improvements, wiring and connections, metering equipment and utility interconnections. Grantor warrants that the physical integrity of all improvements upon which the System will be constructed is sufficient to bear the weight of the System and allow for safe installation of the same. Grantor warrants that, during the term set forth in Section 2 above, it will not make improvements which would alter the physical integrity of the area upon which the System is installed as reflected in any environmental, engineering or other consulting reports obtained by Provider in connection with the installation of the System. Grantee may request written acknowledgement from Grantor pertaining to the final structural analysis related to the System.

- b. Grantee shall have the right from time to time during the term hereof: (i) to cause the construction and installation of the System on the Easement Area; (ii) to own and operate the System on the Easement Area; (iii) to provide for the maintenance, cleaning, repair, replacement and disposal of part or all of any System; (iv) to add or remove the System or any part thereof; and (v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Grantee, to carry out the activities set forth in this Easement Agreement.
- c. Grantor: (i) acknowledges that the installation of all or a portion of the System will require installation to the ground and may require physically mounting and adhering portions of the System to the improvements appurtenant to the Property, and (ii) consents to such mounting or adhering, as applicable.
- d. Grantor and its authorized representatives shall at all times have access to and the right to observe the work being performed pursuant to the PPA and any installation of the System thereof, subject to compliance with Grantee's safety rules. Grantor shall not interfere with such work or handle any materials, equipment or the System without written authorization from Grantee.

8. Enjoyment of Easement Area.

- a. Grantor acknowledges and agrees that: (i) Grantor shall have no right, title or interest in or to the System or any component thereof; (ii) Grantee, or its proper successors or assigns under the PPA, is the exclusive owner and operator of the System; (iii) all equipment comprising the System shall remain the personal property of Grantee, or its designee, and shall not become fixtures, notwithstanding the manner in which the System may be attached to the Property or any improvements.
- b. Grantor represents, warrants, and covenants that Grantee shall have quiet and peaceful possession of the Easement Area free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Grantee's quiet enjoyment thereof, subject to this Easement Agreement. In furtherance of the foregoing, Grantor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge, or party to whom a lien has been granted to execute and deliver to Grantee a document pursuant to which such party acknowledges and consents to the Grantee's rights in the Easement Area as set forth herein.
- c. Grantor will not conduct activities and will not construct or install any improvements on, in or about the Property that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System or grant any rights or interests in the Property which conflict or interfere with the right granted to Grantee hereunder. Grantee: (i) acknowledges that Grantor and its employees, agents, contractors, and subcontractors (collectively, the "**Grantor Permittees**") may need to access the Easement Area to maintain, repair or replace the improvements, and (ii) consents to such access subject to Grantor Permittees exercise of commercially reasonable efforts to minimize interference to the System and compliance with Grantee's safety rules. Grantor shall implement and maintain reasonable and appropriate security measures on the Property to prevent Grantor Permittees and other unrelated third-parties, from having access to the Easement Area (except as provided in this Section) or the System, and to prevent from occurring any theft, vandalism or other actions that have a

reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

- d. Should Grantor require temporary removal or relocation of all or any portion of the System, such removal or relocation shall be scheduled with Grantee in advance. Grantee may undertake such removal or relocation or oversee such removal or relocation in Grantee's discretion.
- e. Grantor covenants that it will obtain a non-disturbance agreement ("**NDA**") from any third party who now has or may in the future obtain an interest in the Easement Area, including, without limitation, any lenders to Grantor, which NDA shall: (i) acknowledge and consent to Grantee's rights hereunder; (ii) acknowledge that the third party has no right, title or interest in or to the System or any component thereof and shall not gain any right, title or interest in or to the System or any component by virtue of the Parties' performance or breach of this Easement Agreement; (iii) subordinate any lien the third party may have in and to the System and other property that is or may from time to time hereafter be located at the Easement Area; and (iv) agree to be bound by the terms of this Easement Agreement should such third party succeed to Grantor's interest in the Property.
- f. Grantor shall keep the Easement Area, excluding the System, neat, clean and in good order and condition. Grantor shall give Grantee prompt notice of any damage to or defective condition in any part or appurtenance of the Easement Area or the System (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Easement Area).
- g. Grantor shall provide Grantee with Station Power pursuant to the provisions of the PPA during the term of this Easement Agreement. For purposes of this Easement Agreement, "**Station Power**" shall mean electric energy consumed in the start-up and operation of the System, which is distinct from the alternating current output of the System.

9. Insolation. Grantor acknowledges and agrees that access to sunlight ("**insolation**") is essential to the System. Accordingly, Grantor shall not permit any interference with insolation on and at the Property. Without limiting the foregoing, Grantor shall not construct or permit to be constructed any structure on the Property or any real property adjacent to the Property owned by Grantor that could adversely affect insolation levels, or emit or permit the emission of particulates, smoke, fog or steam or other air-borne impediments to insolation. Notwithstanding the foregoing, the Parties acknowledge that Grantee is solely responsible for any routine grass, foliage or tree cutting or trimming at or around the fencing it is installing for the System, in its sole discretion, to facilitate proper insolation. If Grantor becomes aware of any potential development or other activity on nearby properties under the control of third parties that could diminish the insolation to the System, Grantor shall promptly advise Grantee of such information and reasonably cooperate with Grantee in measures to preserve existing levels of insolation at the Easement Area. Notwithstanding any of the foregoing, if Grantor erects any new structure around the Property or modifies any existing structure upon the Property, and such structure (or modification) reduces the solar energy available to the System and reduces the electric energy output of the System (a "**Detrimental Change**"), during the remaining term of this Easement Agreement, Grantor shall pay to Grantee a monthly surcharge in arrears equal to the reduction in electric energy output caused by the Detrimental Change multiplied by the then effective kilowatt hour rate set forth in the PPA, and shall pay to Grantee an amount equal to the loss of revenue incurred as a result of the loss of the REC Financial Incentives associated with such reduction in electrical energy output. Determination of the amount of Energy that would have been produced shall be based, during the first year of the System's commercial operations, on the estimated levels of production and, after the first year of the System's commercial operations, based on actual operation of the System in the same period(s) in the year prior to the Detrimental Change, unless Grantor and Grantee mutually agree to an alternative methodology because other facts or circumstances affecting the electric energy output of the System occurred during such period.

10. Taxes. The parties shall allocate applicable taxes as set forth in the PPA.

11. Casualty or Condemnation. In the event the System or the Easement Area shall be: (a) damaged or destroyed, or (b) lawfully and permanently taken by condemnation or any other manner for any public or quasi-public purpose, or by deed in lieu thereof, so as to make the use of the System or Easement Area impractical as reasonably determined by Grantee, then Grantee may elect to terminate this Easement Agreement on not less than twenty (20) calendar days prior notice to Grantor effective as of a date specified in such notice, and on the date so specified, this Easement Agreement shall expire as fully as if such date were the date set forth above for the expiration this Easement Agreement. If Grantee does not elect to terminate this Easement Agreement pursuant to the previous sentence, Grantor shall exercise commercially reasonable efforts to repair the damage to the Easement Area and return the Easement Area to its condition prior to such damage or destruction, except that Grantor shall in no event be required to repair, replace or restore any property of Grantee comprising part of the System, which replacement or restoration shall be Grantee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the System and/or Easement Area, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

12. Assignment. Assignment of this Easement Agreement shall be handled in the same manner and pursuant to the same terms and conditions as provided in and for the PPA.

13. Provisions Benefiting Lender.

- a. Lender's Right to Possession, Right to Acquire and Right to Assign. A lender of the Grantee or the Provider (the "**Lender**") shall have the absolute right to do one, some or all of the following things: (i) assign its Lender's lien on the System; (ii) enforce its Lender's lien on the System; (iii) acquire Grantee's interest in this Easement Agreement (the "**Grantee's Interest**"), take possession of the System or any portion thereof and perform any obligations to be performed by Grantee hereunder, or cause a receiver to be appointed to do so; (iv) assign or transfer Grantee's Interest to a third party; or (v) exercise any rights of Grantee hereunder. Grantor's consent shall not be required for any of the foregoing but at least ten (10) calendar days' advance written notice of the foregoing shall be given to Grantor; and, upon acquisition of Grantee's Interest by a Lender and Lender's provision of such evidence and assurance as Grantor may reasonably require of the capability of Lender or its designee to perform the obligations of Grantee under that certain Power Purchase Agreement between the Grantor and Grantee of even date herewith, Grantor shall recognize the Lender or Lender's designee (as the case may be) as Grantee's proper successor, and the Easement Agreement shall remain in full force and effect.
- b. Notice of Default. As a precondition to exercising any rights or remedies as a result of any default or alleged default by Grantee, Grantor shall deliver a duplicate copy of the applicable Notice of Default (defined below) to each Lender, for which Grantee has provided Grantor with notice information, concurrently with delivery of such notice to Grantee, specifying in detail the alleged Event of Default (as defined below) and the required remedy.
- c. Cure. A Lender shall have the same period after receipt of a Notice of Default to remedy an Event of Default, or cause the same to be remedied, as is given to Grantee, plus an additional thirty (30) calendar days; provided that such thirty (30) calendar-day period shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the System (including possession by a receiver) or otherwise perfect its right to effect such cure (not to exceed, in any such case, 90 days from the Grantor's initial Notice of Default). Lender shall not be required to cure any Event of Default by Grantee, and Grantor reserves the right to terminate this Easement Agreement in the event that an Event of Default is not cured within the time required under this Agreement. Grantor agrees to accept performance by any Lender. Grantor shall not terminate this Easement Agreement prior to expiration of the cure periods available to a Lender as set forth above.

- d. Liability. Each Lender shall not have any obligations under this Easement Agreement prior to the time that such Lender succeeds to Grantee's Interest. Any such Lender shall be liable to perform obligations under this Easement Agreement only for and during the period of time that such Lender directly holds such Grantee's Interest.
- e. New Agreement. While any Lender's lien exists, if this Easement Agreement is: (i) terminated due to a Grantee Event of Default, or (ii) rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditors' rights, then Grantor agrees to enter into a new agreement with the Lender or, if there be more than one Lender, then with the Lender whose Lender's lien is prior in lien, or, at the request of such Lender, Lender's designee. Such new agreement shall: (i) contain the same terms and conditions as this Easement Agreement (except for any requirements that have been fulfilled by Grantee prior to such termination, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, rejection or disaffirmance, and continuing for the remaining term of this Easement Agreement before giving effect to such termination, rejection or disaffirmance, and (iii) enjoy the same priority as this Easement Agreement over any lien, encumbrance or other interest created by Grantor. Until such time as such new easement is executed and delivered, the Lender may enter, use and enjoy the Easement Area and conduct operations thereon as if the Easement Agreement were still in effect.
- f. Lender's Consent. Without the prior written consent of each Lender for which Grantee has provided Grantor with notice information, Grantor shall not: (i) agree to a modification or amendment of this Easement Agreement if the same could reasonably be expected to materially reduce the rights or remedies of a Lender or impair or reduce the security for its Lender's lien, or (ii) accept a surrender of the Easement Area or any part thereof or a termination of this Easement Agreement.
- g. Further Amendments. At Grantee's request, Grantor shall amend this Easement Agreement to include any provision that may reasonably be requested by an existing or proposed Lender, and shall execute such additional documents as may reasonably be required to evidence such Lender's rights hereunder; provided, however, that such amendment shall not materially impair the rights or materially increase the burdens or obligations of Grantor under this Easement Agreement. Further, Grantor shall, within 15 (fifteen) Business Days after written notice from Grantee or any existing or proposed Lender, execute and deliver a certificate to the effect that Grantor: (i) recognizes a particular entity as a Lender, and (ii) will accord to such entity all the rights and privileges of a Lender hereunder.
- h. Waiver of Lien. Grantor consents to each Lender's lien against the System owned by Grantee that is or may from time to time hereafter be located within the Easement Area, and to which Grantee has granted or will grant a security interest to Lender (all such property and the records relating thereto shall be hereafter called the "***Collateral***"). Grantor hereby releases and waives any lien, statutory or otherwise, that Grantor may have with respect to the Collateral, such waiver to continue so long as any Lender's lien exists. Grantor agrees, at Grantee's or Lender's expense, to execute such documents as may be reasonably required by Lender to evidence the foregoing waiver.

#### 14. Defaults and Remedies.

- a. Default. If a Party (the "***Defaulting Party***") fails to perform its obligations hereunder (an "***Event of Default***"), then it shall not be in default hereunder unless it fails to cure such Event of Default: (i) within ten (10) Business Days after delivery of written notice to the Defaulting Party by the other Party (the "***Non-Defaulting Party***") for any monetary Event of Default, or (ii) within sixty (60) calendar days after delivery of written notice to the Defaulting Party by the Non-Defaulting Party from any non-monetary Event of Default. Each such notice of default shall state with particularity the nature of such Event of Default (a "***Notice of Default***"); provided that if the nature of a non-monetary Event of Default is such that more than 60 (sixty) calendar days are required, in the exercise of commercially reasonable diligence, for

performance of such obligation(s), then the Defaulting Party shall not be in default if it commences such performance within such sixty (60)-calendar day period and thereafter pursues the same to completion with commercially reasonable diligence. As used herein, “**Business Day**” means a calendar day other than Saturday, Sunday or a legal holiday in the State of Ohio.

- b. Remedies. The Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative.

15. Notices. All notices, communications and waivers under this Easement Agreement shall be in writing and shall be: (a) delivered in person, or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties to this Easement Agreement shall designate in a written notice to the other Party, or (d) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgment) addressed as follows:

**If to Grantor:**

**If to Grantee:**

All notices sent pursuant to the terms of this Section 14 shall be deemed received: (i) if personally delivered, then on the date of delivery, (ii) if sent by registered or certified mail, then on the earlier of the third (3<sup>rd</sup>) Business Day following the day sent or when actually received, (iii) if sent by reputable overnight express courier, then on the next Business Day immediately following the day sent, or (iv) if by e-mail, then on the date that such transmission is specifically acknowledged by the recipient (not including automatic responses).

16. Public Dedication. The provisions of this Easement Agreement are not intended to and do not constitute a dedication for public use of the Easement Area, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns, and Grantee’s employees and invitees.

17. Running of Benefits and Burdens. This Easement Agreement and its rights, privileges, duties and obligations shall run with the land and survive any such transfer of any part or all of the Property and is binding upon and shall inure to the benefit of the Parties, their successors and assigns.

18. Waiver; Amendment. No waiver of any provision of this Easement Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision of any subsequent breach of the same, or any other term, condition, or provision contained herein. This Easement Agreement may be amended only in a writing signed by both Grantee and Grantor or their respective successors in interest.

19. Headings. The headings in this Easement Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Easement Agreement.

20. Choice of Law. This Easement Agreement shall be construed in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles.

21. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Easement Agreement shall be subject to the dispute resolution provisions of the PPA.

22. Remedies. Notwithstanding anything to the contrary contained herein, nothing in this Easement Agreement shall restrict a Party from seeking any remedies it may have either at law or in equity.

23. Counterparts. This Easement Agreement may be executed in counterparts, which shall together constitute one and the same agreement.

24. Further Assurances. At the reasonable request of Grantee, Grantor agrees to execute and deliver (if appropriate in recordable form), such additional documents and instruments as necessary to carry out the terms and intent hereof, including, if appropriate, documents related to recording in the title records of the County where the Easement Area is located or other applicable government office.

25. Entire Agreement. This Easement Agreement and the PPA represent the full and complete agreement between the parties hereto with respect to the subject matter contained herein and therein and supersede all prior written or oral agreements between said parties with respect to said subject matter. In the event of any conflict between the provisions of this Easement Agreement and the provisions of the PPA, the provisions of the PPA shall govern and control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement as of the Effective Date.

**GRANTOR:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved at to form:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF                    )

**BEFORE ME**, a Notary Public, in and for said County and State, personally appeared the above-named BMU of Bryan, Ohio , an Ohio municipal corporation, by and through its duly authorized (Title)\_\_\_\_\_, \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument on behalf of said municipal corporation and that the same is his/her free act and deed individually and as such officer.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**GRANTEE:**

By: \_\_\_\_\_

Print Name:

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public, in and for said State and County, personally appeared the above-named \_\_\_\_\_, its duly authorized Signatory, who acknowledged that he/she did sign the foregoing instrument on behalf of said limited liability company and that the same is his/her free act and deed individually and as such authorized representative.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**SCHEDULE 1**

**PROPERTY (LEGAL DESCRIPTION)**

**[SEE ATTACHED SURVEY AND DESCRIPTION]**

**SCHEDULE 2**

**EASEMENT AREA LEGAL DESCRIPTION**