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January 22, 2015

Ms. Carlotta Stauffer, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: Undocketed

Dear Ms. Stauffer:

Enclosed is Gulf Power Company's Request for Confidential Classification for Gulf Power Company's Petition for Approval of Energy Purchase Agreements.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. McGee, Jr." in a cursive script.

Robert L. McGee, Jr.  
Regulatory and Pricing Manager

md

Enclosures

cc: Beggs & Lane  
Jeffrey A. Stone, Esq.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of Energy  
Purchase Agreements between Gulf Power  
Company and Gulf Coast Solar Center I, LLC,  
Gulf Coast Solar Center II, LLC and Gulf  
Coast Solar Center III, LLC

Docket No. \_\_\_\_\_-EI  
Filed: January 22, 2015

\_\_\_\_\_ /

**REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Gulf Power Company ("Gulf" or "the Company"), by and through its undersigned counsel, pursuant to section 366.093, Florida Statutes, and consistent with Rule 25-22.006(4), Florida Administrative Code, hereby submits its Request for Confidential Classification of information contained in Exhibits "A," "B," "C," and "D" to its Petition for Approval of Energy Purchase Agreements between Gulf Power Company and Gulf Coast Solar Center I, LLC, Gulf Coast Solar Center II, LLC and Gulf Coast Solar Center III, LLC (collectively, "Gulf Coast") filed with the Florida Public Service Commission (the "Commission") on January 22, 2015. In support of this Request, Gulf states that:

1. Exhibits "A," "B," and "C" to the above-referenced Petition consist of three negotiated energy purchase agreements between Gulf and wholly-owned subsidiaries of HelioSage Energy, LLC. Exhibit "D" consists of a Right of First Refusal Agreement ("ROFR") which is illustrative of ROFR's executed in connection with each of the three energy purchase agreements. Collectively, the documents contained in the foregoing Exhibits A, B, C and D are hereinafter referred to as the "Agreements."

2. The information for which Gulf seeks confidential classification meets the definition of "proprietary confidential business information" as set forth in section 366.093(3), Florida Statutes, which provides:



Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

§ 366.093(3), Fla. Stat.

3. The information for which Gulf seeks confidential classification consists of: (1) information concerning contractual data consistent with section 366.093(3)(d) above; and (2) information relating to competitive interests of the provider of the information, consistent with section 366.093(3)(e) above. More specifically, the confidential information includes contract pricing, liquidated damages, performance security and other negotiated contractual provisions the public disclosure of which would be harmful to Gulf's and Gulf Coast's positions in negotiating similar contracts in the future. Public disclosure of this information could place Gulf, and its customers, at a competitive disadvantage in the marketplace insofar as potential counterparties could view these negotiated provisions as a starting point for future negotiations. Similarly, potential counterparties may refuse to do business with Gulf Power, or charge higher prices, out of a concern that their confidential information could be publicly disclosed. As such,

Gulf requests that the Commission afford this information confidential classification under section 366.093(3)(d) and (e), Florida Statutes.

4. The information filed pursuant to this Request is intended to be, and is treated as, confidential by Gulf and its counterparties and, to this attorney's knowledge, has not been otherwise been publicly disclosed.

5. Submitted as Schedule "A" are copies of the subject Agreements, on which are highlighted the information for which confidential classification is requested. Schedule "A" should be treated as confidential pending a ruling on this request. Attached as Schedule "B" are two (2) edited copies of the subject Agreements which may be made available for public review and inspection. Attached as Schedule "C" to this request is a justification for the request for confidential classification.

**WHEREFORE**, Gulf Power Company respectfully requests that the Commission enter an order protecting the information highlighted on Schedule "A" from public disclosure as proprietary confidential business information.

Respectfully submitted this 22<sup>nd</sup> day of January, 2015.

/s/ Steven R. Griffin

**JEFFREY A. STONE**

Florida Bar No. 325953

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**Attorneys for Gulf Power Company**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of Energy  
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION**

**SCHEDULE "A"**

Provided to the Commission Clerk under separate cover as confidential  
information.

**SCHEDULE "B"**

**REDACTED**



# **Exhibit A**

## **Energy Purchase Agreement**

### **Between**

**Gulf Power Company and**

**Gulf Coast Solar Center I, LLC**

**EXECUTION VERSION**

**ENERGY PURCHASE AGREEMENT**

**Between**

**GULF COAST SOLAR CENTER I, LLC**

**and**

**GULF POWER COMPANY**

**Dated as of October 30, 2014**

## **EXECUTION VERSION**

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## EXECUTION VERSION

### ENERGY PURCHASE AGREEMENT

This Energy Purchase Agreement ("Agreement") is entered into on this 30<sup>th</sup> day of October, 2014 ("Effective Date"), by and between **GULF COAST SOLAR CENTER I, LLC**, a Florida limited liability company ("Seller"), and **GULF POWER COMPANY**, a corporation organized and existing under the laws of the state of Florida ("Gulf Power"). Seller and Gulf Power may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

#### WITNESSETH:

**WHEREAS**, Seller is planning to construct, own, and operate a solar electric generation facility on land for which Gulf Power may acquire the right to construct, own and operate such a facility;

**WHEREAS**, Seller desires to sell, and Gulf Power desires to purchase, the energy to be generated by said generation facility, subject to the terms and conditions of this Agreement;

**WHEREAS**, in connection with such sale and purchase of the energy, the Parties also desire for Seller to provide to Gulf Power all Environmental Attributes and Electrical Products (as such terms are defined herein) associated with said energy; and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which the sale of electric energy, and the provision of Electrical Products and Environmental Attributes, shall be conducted between the Parties.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Gulf Power and Seller, each intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used herein and not otherwise defined, shall have the respective meanings set forth below.

"AAC" has the meaning set forth in Appendix A.

"Adjustment Period" has the meaning set forth in Section 6.2.3.

"Affiliate(s)" means for any specific entity, any other entity directly or indirectly controlling or controlled by or under common control with such specified entity. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of an entity has "control" of such entity; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

## EXECUTION VERSION

**"Aggrieved Party"** has the meaning set forth in Section 16.1.

**"AIER"** means the Associated Interchange Energy Rate as defined in the IIC, including any successor term.

**"Annual Delivered Energy" or "ADE"** has the meaning set forth in Appendix A.

**"Annual Delivery Percentage" or "ADP"** has the meaning set forth in Appendix A.

**"Annual Energy Contract Amount" or "AECA"** has the meaning set forth in Section 7.1 and Appendix F.

**"Annual Period(s)"** means any one of a succession of consecutive three hundred sixty five (365) Day periods (or a three hundred sixty six (366) Day period in the case of a leap year), the first of which shall begin on the Commercial Operation Date.

**"ASC"** means the FASB Accounting Standards Codification.

**"Avoided Energy Rate" or "AER"** has the meaning set forth in Appendix A.

**"Below Investment Grade Rating"** means, with respect to any Person, that: (i) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa3 (or future equivalent) by Moody's; or (ii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB- (or future equivalent) by S&P; or (iii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB- (or future equivalent) by Fitch; or (iv) neither such Person nor its senior unsecured long-term debt not supported by third party credit enhancements, as applicable, is rated by at least two of Moody's, S&P and Fitch.

**"Billing Dispute Notice"** has the meaning set forth in Section 9.2.2.

**"Business Day(s)"** means any Day excluding Saturday and Sunday and excluding any Day on which banking institutions in Pensacola, Florida are closed because of a federal holiday.

**"Buyer Amount"** means the amount determined by Gulf Power to be the "Buyer Amount" for the applicable period of time under Appendix J, as may be modified from time to time.

**"Calendar Year"** means a calendar year comprised of the Months of January through December.

**"Cash Security"** means cash security, free and clear of any adverse lien or interest, provided pursuant to a pledge agreement and a control agreement, each in form and substance acceptable to Gulf Power.

**"Change of Control Transaction"** in respect of a Person means any transaction or series of related transactions which, if consummated, would result in such Person being an Affiliate of



## EXECUTION VERSION

another ultimate parent entity immediately after such transaction. For purposes of this definition, a Person's ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person's outstanding capital stock or other equity interests having ordinary voting power and which does not itself have an ultimate parent entity.

**"Change of Law"** means any change to a Legal Requirement, including changes to laws or regulations regulating or imposing a tax, fee or other charge on discharges, emissions, effluents or disposals from the Facility.

**"Commercial Operation"** has the meaning set forth in Section 2.5.

**"Commercial Operation Date"** or **"COD"** means the date on which the Facility achieves Commercial Operation.

**"Confidential Information"** means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development, or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the "Disclosing Party," the other Party being the "Receiving Party"). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party's possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party's knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; or (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information.

**"Consent(s)"** means any approval, consent, authorization or other applicable requirement with respect to the Facility from any Governmental Authority, including all applicable environmental certificates, licenses, permits and approvals.

**"Contract Energy Price"** or **"CEP"** has the meaning set forth in Appendix A.

**"Curtailed Energy"** or **"CE"** has the meaning set forth in Appendix A.

**"Day"** means a calendar day.

**"Daylight Period"** means the period of time during each Day that commences at sixty (60) minutes prior to the time of sunrise on such Day, and ends sixty (60) minutes after the time of sunset on such Day with the time of "sunrise" and "sunset" determined for Niceville, Florida for such Day by the National Weather Service.

**"Deemed Delivered Energy"** or **"DDE"** has the meaning set forth in Section 7.9.3 and Appendix A.

**"Defaulting Party"** has the meaning set forth in Section 11.3.



## EXECUTION VERSION

**"Demand"** has the meaning set forth in Section 16.2.2.1.

**"Dispute Review Notice"** has the meaning set forth in Section 9.2.3.

**"Effective Date"** means the date of execution of this Agreement.

**"Electrical Products"** means all electrical products produced by or related to the Facility, including spinning reserves, operating reserves, balancing energy, regulation service, reactive power and voltage control, frequency control and other ancillary service products, or any similar benefit Gulf Power otherwise would have realized from or related to the Facility if Gulf Power rather than Seller had constructed, owned or operated the Facility, it being the Parties' intent that all such benefits and entitlements in addition to electrical output that flow to the owner or operator of the Facility belong to Gulf Power at no additional cost to Gulf Power. Electrical Products shall not include any tax benefits, including local, state or federal tax benefits that arise from the construction, ownership or operation of the Facility.

**"Electric System"** means collectively, the entire network of electric generating, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by Gulf Power or its Affiliates for the purposes of generating, transmitting and receiving electric energy.

**"Emergency"** means a condition or situation on the Electric System, including voltage abnormalities, that, in the reasonable judgment of Gulf Power, adversely affects or is reasonably likely to adversely affect: (i) public health, life or property; (ii) Gulf Power's employees, agents or property; (iii) Gulf Power's or any of its Affiliates' ability to safely and reliably operate the Electric System; (iv) the integrity of the Electric System or any electric system connected thereto; or (v) Gulf Power's ability to maintain safe, adequate and continuous service to its customers and the customers of any member of NERC.

**"Energy Payment Adjustment" or "EPA"** has the meaning set forth in Appendix A.

**"Environmental Attributes"** means any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits), howsoever entitled and whether known or unknown, whether existing as of the Effective Date or in the future, and whether or not such Environmental Attributes have been certified or verified under any renewable standards or otherwise that arise or result from the generation of Solar Energy. Environmental Attributes include any such Environmental Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel.



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Environmental Attributes include the exclusive right to report such Environmental Attributes to any Governmental Authority or other Person. Environmental Attributes do not include: (a) any state or federal production tax credits associated with the Facility; (b) any investment tax credits and any other tax credits associated with the Facility; (c) Grants in Lieu of investment tax credits or any similar financial payment or grant with respect to the Facility or the metered electric energy output thereof; or (d) the metered electric energy produced by the Facility.

**"Extended Force Majeure Event"** has the meaning set forth in Section 15.5.1.

**"Event(s) of Default"** has the meanings set forth in Section 11.1 for Seller and Section 11.2 for Gulf Power.

**"Excess ADE Payment"** has the meaning set forth in Appendix A.

**"Facility"** means all panels and related equipment and facilities of the solar photovoltaic electric generating plant described in Appendix E to be or being constructed by Seller on the Site with a nameplate electric generating capability equal to the Planned Capacity Amount. The Facility shall include the panels and all auxiliary equipment and facilities installed at the Site necessary or used for the extraction or collection of fuel, or the production, control, delivery or monitoring of Solar Energy by the panels. All equipment and facilities installed on Seller's side of the Point of Change in Ownership shall be considered a part of the Facility.

**"Fair Market Value"** has the meaning set forth in Section 6 of Appendix I.

**"FASB"** means the Financial Accounting Standards Board.

**"FERC"** means the Federal Energy Regulatory Commission, or any Governmental Authority succeeding to the powers and functions thereof.

**"Fitch"** means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"Force Majeure Event"** has the meaning set forth in Section 15.1.

**"Force Majeure Remedy Plan"** means the plan submitted to a Party pursuant to Section 15.5 in the event of an Extended Force Majeure Event.

**"FPSC"** means the Florida Public Service Commission.

**"FPSC Approval Target Date"** has the meaning set forth in Section 3.4.3.

**"FPSC Denial"** has the meaning set forth in Section 3.4.3.

**"FPSC"** means the Florida Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.

## EXECUTION VERSION

**"GAAP"** means generally accepted accounting principles in the United States, as modified from time to time.

**"Governmental Authority" or "Governmental Authorities"** means any federal, state or local governmental or regulatory authority, administrative agency, commission, department, board or court that has jurisdiction over either of the Parties to this Agreement or the subject matter of this Agreement, when referenced in this Agreement.

**"Green-e Energy"** means the Green-e certification and verification program for renewable energy, greenhouse gas emission reductions and other Environmental Attributes that is administered by the Center for Resource Solutions, and any successor(s) thereto.

**"Green-e National Standard"** means the Green-e National Standard as determined, published, codified and otherwise promulgated by Green-e and that defines eligibility criteria for Green-e certified renewable energy products, including renewable energy certificates, utility green pricing programs, and competitive market electricity products, as such standard(s) may be modified from time to time.

**"Ground Lease"** means that certain Ground Lease to be executed and delivered by the Parties that provides Seller the right to develop, construct, own and operate the Facility on the Site.

**"Gulf Power"** means Gulf Power Company and its permitted successors and assigns.

**"IIC"** means the "Southern Company System Intercompany Interchange Contract" as filed pursuant to 119 FERC ¶ 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138, as may be amended from time to time, or any successor contract thereto among Gulf Power and certain of its Affiliates.

**"Indemnified Party"** has the meaning set forth in Section 13.1.

**"Indemnifying Party"** has the meaning set forth in Section 13.1.

**"Interconnection Agreement"** means that certain Interconnection Agreement by and between Seller and the Transmission Provider containing terms and conditions governing the interconnection and parallel operation of the Facility with the Electric System.

**"Interconnection Cost Threshold"** means [REDACTED]

**"Interest Rate"** means the interest per annum equal to the prime rate as published in The Wall Street Journal or comparable successor publication under "Money Rates," as applied on a daily basis and compounded quarterly.

**"Interconnection Requirements"** means the requirements set forth in Appendix H.

**"Investment Tax Credit Deadline"** means the expiration date of the federal investment tax credit for eligible solar energy property available under 26 USC §48, which, as of the Effective Date is December 31, 2016, as such date may be extended by subsequent legislation.



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**"kW"** means kilowatt alternating current.

**"Legal Requirement(s)"** means any law, code, statute, regulation, rule, ordinance, permit, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

**"Letter of Credit"** means a letter of credit in the form of Appendix B hereto, or otherwise acceptable to Gulf Power, in an available undrawn amount of not less than the Required Seller Post Amount, which is in full force and effect and is not within ninety (90) Days of terminating or expiring, issued by a major U.S. commercial bank or a U.S. branch office of a major foreign bank who has and maintains assets of at least \$25 billion and at all times having a senior unsecured rating of at least "A2" (or future equivalent) by Moody's and at least "A" (or future equivalent) by S&P.

**"Material Adverse Change"** means, with respect to a Person, any event, occurrence or circumstance whereby the maturity of any indebtedness of such Person which in the aggregate exceeds an amount equal to \$50,000,000.00 or three percent (3%) of the equity in such Person that is owned by the shareholders of such Person, whichever is less, is accelerated by the holder or holders thereof as a result of a default thereunder.

**"Material Adverse Financial Condition"** means, with respect to a Person, any circumstance, event or condition whereby: (i) such Person has or commences to have a Below Investment Grade Rating; or (ii) there exists or commences to exist a Material Adverse Change with respect to such Person.

**"Metering System"** means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is being made available or delivered to Gulf Power at the Point of Delivery.

**"Minimum Energy Contract Amount"** means, for a given Calendar Year, [REDACTED] of the Annual Energy Contract Amount for such Calendar Year.

**"Minimum Investment Grade Condition"** means, with respect to any Person, any circumstance, event or condition whereby: (i) a Material Adverse Financial Condition does not exist with respect to such Person; and (ii) (a) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of Baa3 (or future equivalent) by Moody's; (b) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating of BBB- (or future equivalent) by S&P; or (c) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of BBB- (or future equivalent) by Fitch.

**"Month(s)"** means a calendar month, commencing at the beginning of the first Day of such calendar month.

**"Monthly"** has a meaning correlative to that of Month.

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**"Monthly Delivered Energy"** or **"MDE"** has the meaning set forth in Appendix A.

**"Monthly Energy Payment(s)"** means the Monthly amount to be paid by Gulf Power to Seller for Gulf Power's purchase of Solar Energy from the Facility as calculated in accordance with Appendix A.

**"Moody's"** means Moody's Investors Service, Inc. or its successor. If Moody's ceases to exist or publish ratings, Moody's shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"MW"** means megawatt alternating current.

**"MWh"** means megawatt-hour alternating current.

**"National Weather Service"** means the National Weather Service, a component of NOAA, or successor thereto.

**"NERC"** means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

**"Network Resource"** has the meaning set forth in the Southern OATT, including any successor term.

**"Net Worth"** means, with respect to any Person, the dollar value calculated by subtracting total liabilities from total assets (excluding goodwill and other intangible assets described in ASC 350 (formerly FASB Statement 142)) of such Person as such terms are determined in accordance with GAAP, as such may be modified from time to time.

**"Non-Defaulting Party"** has the meaning set forth in Section 11.3.

**"NOAA"** means the National Oceanic and Atmospheric Administration, or successor thereto.

**"Noticed Party"** has the meaning set forth in Section 16.1.

**"Operating Committee"** means the committee established pursuant to Section 4.7.

**"Operating Procedures"** means those procedures developed by the Parties pursuant to Section 4.1.1.

**"Operating Representatives"** means those individuals appointed by each of the Parties to form and maintain the Operating Procedures.

**"Party"** or **"Parties"** means either Gulf Power or Seller or both.

**"Party-Appointed Arbitrator(s)"** has the meaning set forth in Section 16.2.2.2.



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**"Performance Security"** means Cash Security, a Letter of Credit or a Seller Guaranty; provided, however, at least fifty percent (50%) of any Performance Security required to be provided by Seller under this Agreement must be in the form of either a Letter of Credit or Cash Security whenever Seller is providing a Seller Guaranty and: (i) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa2 (or future equivalent) by Moody's; (ii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB (or future equivalent) by S&P; or (iii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB (or future equivalent) by Fitch.

**"Person"** means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Planned Capacity Amount"** means thirty (30) MW (AC or alternating current).

**"Point of Change in Ownership"** has the meaning set forth in Appendix H.

**"Point of Delivery"** means the point where Seller shall deliver Solar Energy from the Facility to Gulf Power pursuant to this Agreement, which point shall be the Point of Interconnection.

**"Point of Interconnection"** means the point at which the Facility is interconnected to the Electric System at Transmission Provider's substation, as defined in the Interconnection Agreement with the Transmission Provider and as illustrated in the diagram set forth in Appendix H.

**"Prevailing Rate"** has the meaning set forth in Appendix A.

**"Primary Beneficiary"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Prudent Industry Practices"** means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric industry in the United States (as the same pertain to solar electric generation facilities) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the United States having due regard for, among other things, manufacturers' warranties and applicable Legal Requirements.

**"PURPA"** means the Public Utility Regulatory Policies Act of 1978, as such act may be amended from time to time.



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**“Renewable Energy Credits”** means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy generated at the Facility that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective.

**“Required Commercial Operation Date”** or **“RCOD”** means 11:59 pm Central Prevailing Time on February 28, 2017, or such later date as may be extended pursuant to the provisions of Section 2.6.4 or Section 6.1.4.

**“Required Seller Post Amount”** means: (i) for any time period during which there exists a Minimum Investment Grade Condition with respect to Seller, an amount that is equal to fifty percent (50%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J; and (ii) for any time period during which there exists a Material Adverse Financial Condition with respect to Seller, an amount that is equal to one hundred percent (100%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J.

**“Rules”** has the meaning set forth in Section 16.2.2.1.

**“S&P”** means Standard & Poor’s Financial Services LLC, or its successor. If S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**“Scheduled Outage(s)”** has the meaning set forth in Section 4.4.

**“Security Posting Condition”** means an occurrence, non-occurrence, circumstance or event whereby there exists or commences to exist, with respect to Seller, a Material Adverse Financial Condition or a Minimum Investment Grade Condition.

**“Seller”** means Gulf Coast Solar Center I, LLC and its permitted successors and assigns.

**“Seller Amount”** means the amount determined by Gulf Power to be the “Seller Amount” for the applicable period of time under Appendix J, as may be modified from time to time.

**“Seller Guarantor”** means an entity that guarantees Seller’s obligations under this Agreement, including through a Seller Guaranty.

**“Seller Guaranty”** means a continuing guaranty in the form of Appendix C hereto, or otherwise acceptable to Gulf Power, which is properly completed and executed and in full force and effect and with respect to which the Seller Guarantor has not given any notice of termination, cancellation or revocation, issued by a Person: (i) who is a direct or indirect parent of Seller, unless otherwise agreed by the other Party in its sole discretion; (ii) with respect to whom there does not exist a Material Adverse Financial Condition at any time such guaranty is intended to constitute Performance Security; and (iii) has a Net Worth of at least five hundred



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million dollars (\$500,000,000) for the entire period during which such guaranty is intended to constitute Performance Security.

**"Seller Installed Facilities"** has the meaning set forth in Appendix H.

**"Seller Radial Facilities"** has the meaning set forth in Appendix H.

**"Site"** means the site on which the Facility shall be constructed, operated and maintained, as set forth in Appendix E.

**"Site Remediation Amount"** has the meaning set forth in Section A of Appendix J.

**"Solar Energy"** means the electricity, including all the associated Electrical Products, produced by the Facility by converting sunlight into energy using photovoltaic cells, excluding electric energy produced in connection with testing, start-up or commissioning of the Facility.

**"Southern Companies"** means, collectively, the electric utility operating companies of The Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company).

**"Southern OATT"** means the Open Access Transmission Tariff of the Southern Companies that own or operate transmission systems (which, as of the Effective Date, include Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company), as filed and maintained in accordance with the requirement of FERC, as well as any successor tariff or agreement.

**"Station Service"** means energy that is used to serve the electrical requirements of the Facility, and includes the step-up transformer losses and line losses between the Facility and the Point of Delivery.

**"Target Payment"** has the meaning set forth in Appendix A.

**"Term"** has the meaning set forth in Section 3.1.

**"Third Arbitrator"** has the meaning set forth in Section 16.2.2.2.

**"Transmission Provider Installed Facilities"** has the meaning set forth in Appendix H.

**"Transmission Provider"** means the owner or operator of the transmission system responsible for providing transmission interconnection service to the Electric System.

**"Transmission Curtailment Event"** means a condition or situation whereby the Transmission Service is curtailed, interrupted, or unavailable consistent with Section 33 of the Southern OATT or the transmission loading relief procedures of NERC referenced in Attachment P to the Southern OATT (including any successor provisions or procedures thereto). For purposes of this definition, a Transmission Curtailment Event shall include any such curtailment, interruption or unavailability of Transmission Service that affects the ability of Gulf

## EXECUTION VERSION

Power to receive energy at the Point of Delivery or that affects the ability of Gulf Power to deliver energy from the Point of Delivery to Gulf Power's load.

**"Transmission Service"** means the network transmission service that Gulf Power requests and obtains, by designating the Facility as a Network Resource under Section 7.6.1, in order to deliver energy from the Point of Delivery to its customers.

**"Variable Interest"** or **"VI"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Variable Interest Entity"** or **"VIE"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

### 1.2 Interpretation.

1.2.1 This Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

1.2.2 In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

1.2.3 Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

1.2.4 Any reference in this Agreement to "Section," "Article," "Appendix," or "Schedule" shall be references to this Agreement unless otherwise stated, and all such Schedules and Appendices shall be incorporated in this Agreement by reference.

1.2.5 In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties, which successor or alternate index or publication shall reflect information that is the same (or as similar as possible) as the information that was previously published in the prior applicable index or publication.

1.2.6 Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time.



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1.2.7 Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

1.2.8 Whenever the term "consent" or "approval" is used herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed by the consenting or approving Party, unless the Agreement provides such consent or approval is in the sole and absolute discretion of the consenting Party.

### ARTICLE 2: FACILITY DESIGN AND CONSTRUCTION

2.1 Facility. The Facility consists of the solar powered electric generation facilities with a total nameplate electric generating capability equal to the Planned Capacity Amount, as further described in Appendix E.

2.2 Consents. Seller hereby agrees to seek to obtain, at its sole expense, any and all Consents that Seller is required to obtain for the development, construction, operation, maintenance, testing and any necessary modification of the Facility. Gulf Power will support and cooperate with, and not oppose, obstruct or otherwise interfere in any means with the efforts of Seller or its Affiliates to obtain all Consents that are the responsibility of Seller hereunder.

2.3 Inspections. Upon reasonable prior advance notice to Seller, representatives of Gulf Power shall be entitled to inspect the construction, maintenance, operation and testing of the Facility. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Gulf Power provided that: (i) such inspections shall not materially interfere with the testing or operations of the Facility, and (ii) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety. Gulf Power's review and inspection of the Facility shall not be construed as endorsing the design or construction thereof or as any warranty of the safety, durability or reliability of the Facility.

2.4 [Reserved].

2.5 Design and Construction of the Facility. Seller shall cause the Facility to be designed, engineered, constructed, installed, tested and commissioned in accordance with: (i) Prudent Industry Practices and all applicable Legal Requirements; and (ii) the specifications and requirements set forth under the Facility description in Appendix E. Seller shall use diligent efforts to achieve Commercial Operation of the Facility on or before the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date") and to otherwise carry out its obligations under this Agreement. The Facility shall be deemed to have achieved "Commercial Operation" upon fulfillment of all of the following criteria: (i) Seller shall demonstrate the completion of the construction and installation of solar photovoltaic modules and inverters and all other equipment and facilities comprising the Facility, representing a total completed and installed nameplate electric generating capacity equal to the



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Planned Capacity Amount; (ii) Seller shall demonstrate that the Facility is capable of producing Solar Energy and delivering such Solar Energy to the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iii) Gulf Power is able to receive such Solar Energy at the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iv) Seller shall have provided Gulf Power a certificate reasonably acceptable to Gulf Power, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and the terms of this Agreement; and (v) Seller shall have delivered to Gulf Power a certificate from a responsible officer of Seller certifying that Seller is in compliance with the Interconnection Agreement and Seller has obtained all applicable Consents required under Legal Requirements to be obtained by Seller at the time of Commercial Operation of the Facility for the construction, ownership, operation and maintenance of the Facility in accordance with this Agreement.

### 2.6 Failure to Achieve Required Commercial Operation Date.

2.6.1 In the event that the Facility does not achieve Commercial Operation by the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"). Seller shall pay Gulf Power an amount of liquidated damages equal to [REDACTED] for each Day after the Required Commercial Operation Date that the Facility does not achieve Commercial Operation ("Daily LDs"). Such liquidated damages shall be paid to Gulf Power within three (3) Business Days after Seller receives an invoice from Gulf Power for the same. Seller shall pay such liquidated damages to Gulf Power for each Day until the earlier of: (i) the Commercial Operation Date; (ii) the Day that Seller notifies Gulf Power that Commercial Operation will not be achieved; or (iii) the Day that Gulf Power terminates this Agreement pursuant to Section 2.6.2.

2.6.2 If the Facility does not achieve Commercial Operation within two hundred seventy (270) Days after the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"), then Gulf Power shall be entitled to terminate this Agreement at any time thereafter by providing notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved.

2.6.3 If Seller notifies Gulf Power under Section 2.6.1(ii) that Commercial Operation will not be achieved, or if Gulf Power provides notice to Seller terminating this Agreement under Section 2.6.2, this Agreement shall immediately terminate and the following shall apply (in addition to other applicable provisions of this Agreement):

(i) Seller shall, within three (3) Business Days, pay to Gulf Power liquidated damages in an amount equal to: (i) if commencement of initial construction activities at the Site have not begun, [REDACTED] (in addition to any Daily LDs that are required to be paid); or (ii) if commencement of initial construction activities at the Site have begun, [REDACTED]



## EXECUTION VERSION

██████████ (in addition to any Daily LDs that are required to be paid); and

(ii) Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.4 Seller shall be entitled to extend the Required Commercial Operation Date on a Day-for-Day basis up to the period of any delay in achieving Commercial Operation that is caused by a Force Majeure Event. In the event that Seller extends the Required Commercial Operation Date under this Section 2.6.4 by more than three hundred sixty five (365) Days, Gulf Power shall be entitled to terminate this Agreement at any time thereafter upon written notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved. If Gulf Power provides notice to Seller terminating this Agreement under this Section 2.6.4, this Agreement shall immediately terminate. Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.5 Gulf Power may draw upon the Performance Security to recover any amounts required to be paid by Seller under this Section 2.6, and Seller will be required to periodically replenish such Performance Security in accordance with Article 5.

2.6.6 In no event shall Seller have the right to receive a Monthly Energy Payment for any energy delivered prior to the Commercial Operation Date. Notwithstanding the foregoing, Seller may sell Solar Energy during testing of the Facility pursuant to Section 7.2.

## ARTICLE 3: TERM; PURCHASE OPTION; CONDITIONS; REGULATORY

### 3.1 Term.

3.1.1 Subject to the early termination provisions set forth herein, this Agreement shall become effective on the Effective Date and shall remain in full force and effect until the end of the twenty fifth (25th) Annual Period ("Term"); provided, however, that if the Parties mutually agree in writing (as determined by each Party in its sole and absolute discretion), the Term shall be extended for up to two additional periods of five (5) Annual Periods each (for up to a total of ten (10) additional Annual Periods); provided further, that if the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to this Section 3.1.1, for the period of the extension, the Contract Energy Price shall adjust as set forth in Appendix A, and the values set forth in Table J-1, Table J-2

## EXECUTION VERSION

and the table for "Minimum Amount" in Appendix J shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.

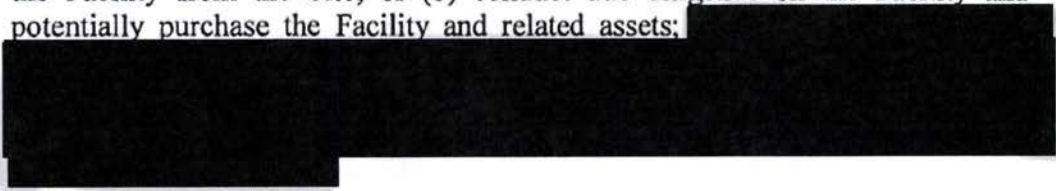
3.1.2 In the event that the Ground Lease terminates for any reason, then this Agreement shall also terminate at the time of termination of the Ground Lease (subject to any other rights that Gulf Power or Seller may have under this Agreement and the Ground Lease, including under Article 11 of this Agreement).

3.1.3 Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations that shall survive termination or expiration: (i) the obligation to pay each other all amounts accrued or then owed and not paid under this Agreement; and (ii) all obligations that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement, including such obligations that must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.2 Purchase Option During the Term. Throughout the Term, Gulf Power shall have the option to purchase the Facility and certain other property in accordance with Appendix I; provided, however, unless this Agreement terminates and Section 3.3 applies, in no event shall any such purchase be consummated prior to the end of the fifth (5th) Annual Period. In order for Gulf Power to make a determination of whether to exercise such option to purchase the Facility, Gulf Power shall have the right to conduct due diligence with respect to the Facility as set forth in Appendix I. Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.2, which Gulf Power may record to give public notice of such rights.

3.3 Purchase Option and Removal of the Facility After Termination. Upon the expiration of the Term, or if this Agreement terminates at any time prior to the expiration of the Term for any reason (including under Section 2.6 or Article 11), the following provisions and obligations and rights of the Parties shall survive such expiration or termination:

3.3.1 Within thirty (30) Days after such expiration or termination, Gulf Power shall elect by notice to Seller to either: (a) require Seller to remove the Facility from the Site; or (b) conduct due diligence on the Facility and potentially purchase the Facility and related assets;

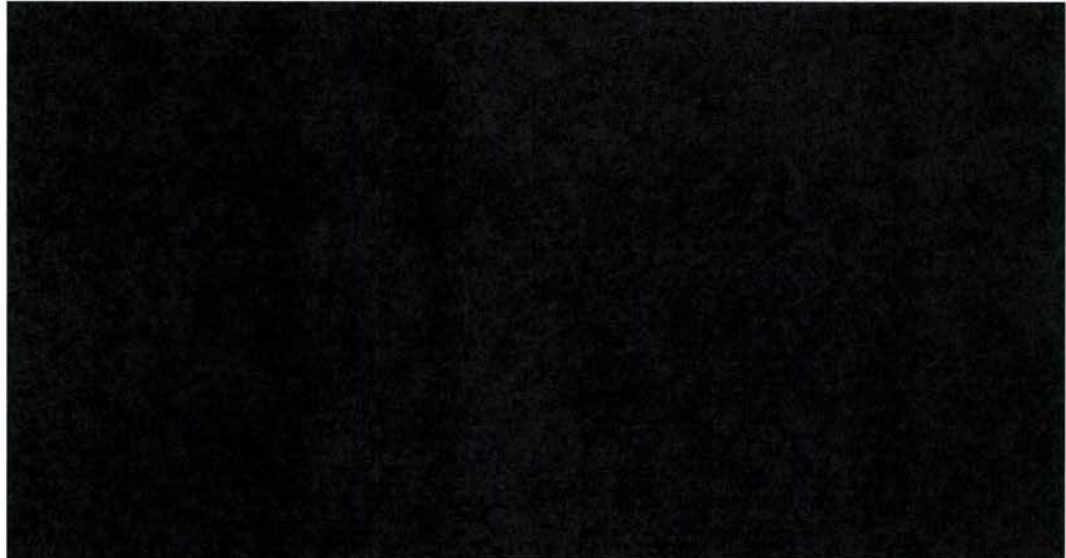


3.3.2 If Gulf Power elects to require Seller to remove the Facility from the Site, then within one hundred twenty (120) Days after such election is made, Seller shall at its sole cost and expense remove all facilities, equipment, components and parts of the Facility, and all interconnection facilities that are then owned by Seller, and restore the Site to as nearly as practicable the condition



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it was in prior to Seller's commencement of activities on the Site, consistent with the provisions of the Ground Lease. In the event that Seller does not fully comply with the foregoing obligation, then Seller shall be liable to Gulf Power for, and shall pay to Gulf Power on demand, all costs and expenses incurred by Gulf Power in connection with the removal of all facilities (including interconnection facilities), equipment, components and parts of the Facility and restoration of the Site to such condition.



3.3.4 Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.3, which Gulf Power may record to give public notice of such rights.

### 3.4 FPSC Approval.

3.4.1 Notwithstanding any other provision of this Agreement, in no event shall Gulf Power have any obligation to receive or purchase Solar Energy under this Agreement unless: (i) the FPSC approves this Agreement through the issuance of a final, non-appealable order without qualifications or conditions; or (ii) Gulf Power fails to exercise its right to terminate this Agreement pursuant to Section 3.4.3 and, as a result, Gulf Power is deemed to have waived its right to terminate this Agreement pursuant to Section 3.4.3.

3.4.2 Gulf Power shall use its reasonable efforts to obtain FPSC approval of this Agreement and in furtherance thereof, shall file a petition for approval as soon as reasonably practicable after the execution of the Agreement, and diligently pursue such FPSC approval. Seller agrees to assist and support Gulf Power, in a timely manner and to the extent reasonably requested by Gulf Power, in obtaining FPSC approval.

## EXECUTION VERSION

3.4.3 If, after one hundred eighty (180) Days from the filing date by Gulf Power of a petition with the FPSC for approval of this Agreement ("FPSC Approval Target Date"), the FPSC has not approved this Agreement through the issuance of a final, non-appealable order without qualifications or conditions, or if the FPSC issues an order denying Gulf Power's petition for approval of the Agreement ("FPSC Denial") prior to the FPSC Approval Target Date, then Gulf Power may terminate this Agreement without liability or obligation upon written notice to Seller; provided, however, that such notice is delivered to Seller no later than thirty (30) Days after the first to occur of the FPSC Approval Target Date or the date of the FPSC Denial. If Gulf Power fails to exercise the aforementioned termination right within such thirty (30) Day period, then Gulf Power shall be deemed to have waived such termination right. Each Party agrees that it will not oppose, protest or contest the petition with the FPSC for approval of this Agreement. Once the final, non-appealable order approving this Agreement has been issued and is deemed accepted by Gulf Power, the Parties agree they will not seek to amend, oppose, protest or contest such FPSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such FPSC order.

3.4.4 If, at any time after having approved this Agreement, the FPSC issues an order with respect to this Agreement that prohibits Gulf Power from recovering from its customers some or all of the payments required to be made by Gulf Power to Seller under this Agreement ("Disallowance Order"), then Gulf Power shall be entitled to terminate this Agreement without liability or obligation upon written notice to Seller, provided that such written notice must be delivered to Seller no later than thirty (30) Days after the issuance of the Disallowance Order. In connection with the foregoing, Gulf Power and Seller agree to support and defend this Agreement and their respective rights to cost recovery and payment, against any challenge thereto by any Person.

### 3.5 Execution of Property Agreements.

3.5.1 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), Gulf Power and the owner of the Site have not entered into an agreement, with terms and conditions satisfactory to the Parties in their sole and absolute discretion, that: (i) provides Gulf Power, its Affiliates and/or partners the right to develop, construct, own and operate a solar generation facility on their own behalf on the Site; and (ii) provides Seller the right to develop, construct, own and operate the Facility on the Site pursuant to this Agreement, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the full execution of such an agreement; provided further, that Gulf Power shall notify Seller (by written, electronic or oral notice) after such an agreement has been fully executed. If a Party terminates this Agreement under this Section 3.5.1, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue



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prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

3.5.2 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), the Parties have not executed and delivered a Ground Lease providing Seller the right to develop, construct, own and operate the Facility on the Site, with terms and conditions that are satisfactory to each Party in its sole and absolute discretion, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the Parties' execution and delivery of a Ground Lease. If a Party terminates this Agreement under this Section 3.5.2, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

### 3.6 Preservation of Terms.

3.6.1 Each Party agrees that except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the other terms of this Agreement (including the right of a Party to terminate this Agreement as expressly set forth herein, including under Section 3.4.4), the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application by a Party to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

3.6.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement under Sections 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *NRG Power Marketing LLC v. Maine Public Utility Commission*, 130 S. Ct. 693 (2010).



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### ARTICLE 4: OPERATION AND MAINTENANCE OF THE FACILITY

4.1 General Standards. During the Term, Seller shall have the sole responsibility, at its sole expense, to manage, control, operate and maintain, or cause others to manage, control, operate and maintain, the Facility in accordance with Prudent Industry Practices, manufacturer's recommendations and the requirements set forth in this Agreement. Seller shall, and shall cause others that manage, control, operate and maintain the Facility to: (i) comply with all Legal Requirements applicable to Seller, Gulf Power or the owner of the Site, and (ii) diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

4.1.1 Seller and Gulf Power shall mutually develop written Operating Procedures to accommodate the specifications of the Facility as constructed by Seller within the earlier of one hundred and eighty (180) Days prior to the Commercial Operation Date or the first instance of parallel operation. Such Operating Procedures shall address: (i) deliveries of energy during start-up and testing of the Facility; (ii) the method of day-to-day communications; (iii) clearance and switching practices; (iv) hourly energy forecasting; (v) daily energy reports; (vi) Facility operations log; (vii) reactive power output; (viii) technical limitations of Facility operation; (ix) coordination of maintenance scheduling; (x) designation of Confidential Information; (xi) the procedure for substantiating the transfer of Environmental Attributes under this Agreement; (xii) the verification of information with respect to the production of Environmental Attributes transferred to Gulf Power hereunder for purposes of certification; and (xiii) such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying the Operating Procedures in writing to reflect mutually agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

4.1.2 Seller shall, or shall cause others to, employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. To the extent consistent with Prudent Industry Practices, Seller shall keep accurate records of any accident or other occurrence at the Site that results in material injury to persons or material damage to property. Seller shall provide to Gulf Power reasonable access to these records upon not less than seven (7) Days notice during normal business hours, but shall not be required to provide access to employment or medical records regarding Facility personnel, except results of drug screening tests.

#### 4.2 Access to the Facility.

4.2.1 Upon reasonable notice, representatives of Gulf Power shall have access to the Facility and to property owned or controlled by Seller that is related to the Facility in order to: (i) conduct tours of the Facility for other Persons (including members of the public) and otherwise provide other such Persons with the opportunity to view and photograph the Facility; (ii) inspect,



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maintain, and test meters and other Gulf Power equipment; (iii) interrupt, monitor, or measure energy generated by the Facility as it deems necessary in accordance with Prudent Industry Practice; (iv) inspect the Facility; and (v) take such other action as may be reasonably necessary to exercise Gulf Power's rights under this Agreement, provided that (a) such access shall not materially interfere with the testing or operations of the Facility, and (b) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety.

4.2.2 In no event shall any of Gulf Power's statements, representations, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the maintenance and operation of the Facility. Any inspection by Gulf Power of property or equipment owned or controlled by Seller, or any review of or consent to Seller's plans by Gulf Power, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee.

4.3 Availability of Records. Seller shall keep complete and accurate records and all other data for the purpose of proper administration of this Agreement in accordance with the following guidelines:

4.3.1 All such records shall be maintained for a minimum of seven (7) years after the creation of such record or data and for any additional period of time required by any Legal Requirement or Governmental Authority. In the event Seller intends to dispose of or destroy any such records after such seven (7) year period, Seller shall provide Gulf Power with thirty (30) Days prior written notice.

4.3.2 Seller shall maintain an accurate and up-to-date operating log with records of: (i) real power production for each clock hour; (ii) changes in operating status and scheduled maintenance; (iii) any unusual conditions found during inspections; and (iv) any significant events related to the operation of the Facility.

4.3.3 Upon reasonable advance notice, either Party shall have the right to examine the records and data of the other Party in order to facilitate any determination that such Party is required or permitted to make under this Agreement.

4.3.4 Any information provided by either Party pursuant to this Section 4.3 shall be subject to the confidentiality provisions set forth in Section 17.16.

4.3.5 Gulf Power and Gulf Power's independent auditor shall have the right to inspect from time to time, upon reasonable notice to Seller, such books and records of Seller as are reasonably necessary for Gulf Power to determine whether Seller constitutes a VIE and the Agreement represents a VI. To



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the extent such inspection requires access to confidential information of Seller, such information shall constitute Confidential Information subject to the provisions of Section 17.16 of this Agreement.

4.4 Scheduled Maintenance. Seller shall submit to Gulf Power, before October 1 of each Calendar Year, a schedule of planned Facility outages during which maintenance affecting three (3) MW or more of Facility generating capability will be performed for the next Calendar Year ("Scheduled Outages") (provided that Seller shall submit the first such schedule for the first Annual Period no later than ninety (90) Days before the commencement of the first Annual Period); provided, however, that: (i) Seller shall only conduct Scheduled Outages of the Facility during either (a) times that do not occur during a Daylight Period, or (b) a Daylight Period occurring in the Month of December; and (ii) there shall be no more than twenty (20) hours of Scheduled Outages during the total aggregate Daylight Periods of any given Month of December. Gulf Power shall have thirty (30) Days to review the proposed schedule of Scheduled Outages and may approve or reject such schedule in whole or in part, and may suggest alternative dates for Scheduled Outages. Scheduled Outages are subject to the prior approval of Gulf Power. Seller shall resubmit revised schedules for Scheduled Outages to Gulf Power within thirty (30) Days after Gulf Power's disapproval of a previous schedule, and Gulf Power and Seller agree to use commercially reasonable efforts to promptly develop schedules for Scheduled Outages that are mutually acceptable to the Parties.

4.5 Station Service. Seller shall be required to enter into a separate standard retail agreement with Gulf Power (or another appropriate entity permitted to serve customers at the Facility's location) for Station Service not directly provided by the Facility and will be responsible for bearing all associated costs.

4.6 Unplanned Outages. In addition to Scheduled Outages, Seller shall use commercially reasonable efforts to promptly notify Gulf Power of any event or condition (other than lack of or variations in sunlight) that will result in the Facility not being able to produce Solar Energy or a reduction of three (3) MW or more in the generating capability of the Facility, in either case, for more than sixty (60) consecutive minutes, including forced outages at the Facility and Force Majeure Events affecting the Facility. Such notices shall contain information describing such event or condition, the beginning date and time of such event or condition, the expected end date and time of such event or condition, the amount of Solar Energy that Seller expects will be provided during such event or condition, and any other information reasonably requested by Gulf Power. With respect to any such event or condition, Seller shall provide Gulf Power with such notice by any reasonable means required by Gulf Power, including by telephone or electronic mail. To the extent reasonably practicable, Seller shall cause any unplanned outages to occur during hours that are not within Daylight Periods.

### 4.7 Operating Committee.

4.7.1 The Parties shall establish an Operating Committee comprised of two (2) Operating Representatives, one (1) appointed by each of Seller and Gulf Power. Seller and Gulf Power, as the case may be, shall provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The Operating Representatives



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shall meet as necessary, but not less often than once each Calendar Year, at a mutually agreeable time and place upon prior written notice. The Operating Representatives shall represent the Parties in all matters arising hereunder that may be delegated to them by mutual agreement of the Parties, but shall not have any authority to modify or amend the terms of this Agreement.

4.7.2 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be submitted to senior officers for discussion and resolution. All decisions and agreements made by the Operating Representatives or their principals shall be evidenced in writing.

### 4.8 Availability Forecasting.

4.8.1 Seller shall provide Gulf Power with forecasts of the delivery of energy under this Agreement as described below. Such availability forecasts shall include the updated status of all Facility equipment that may impact availability. Seller shall use commercially reasonable efforts to forecast the delivery of energy under this Agreement accurately and to transmit such information in a format reasonably acceptable to Gulf Power. Gulf Power and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Gulf Power.

4.8.2 No later than September 1 of each Calendar Year, Seller shall provide to Gulf Power a non-binding forecast of the hourly delivery of energy under this Agreement for an average Day in each Month of the following Calendar Year in a form reasonably acceptable to Gulf Power.

4.8.3 Ten (10) Business Days before the commencement of the first Annual Period, and thereafter ten (10) Business Days before the beginning of each Month during the Term, Seller shall provide to Gulf Power a non-binding forecast of the Hourly energy deliveries under this Agreement for each Day of the following Month in a form reasonably acceptable to Gulf Power.

4.8.4 No later than 5:00 a.m. (Central Prevailing Time) of each Day, Seller shall provide Gulf Power a non-binding forecast of energy deliveries under this Agreement for the remainder of such Day and the following seven (7) Days in a form reasonably acceptable to Gulf Power. Each such notice shall clearly identify, for each hour, Seller's forecast of all deliveries of energy pursuant to this Agreement. In the event that Seller foresees that actual deliveries under this Agreement for any Day will be materially different than a forecast previously provided for such Day, Seller shall, as soon as reasonably possible, provide notice to Gulf Power of such change and an updated forecast. The Operating Committee shall determine what constitutes such a material change and



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identify the Operating Representative of Gulf Power that should receive notice of such change.

### 4.9 Weather Station and Data.

4.9.1 No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least three (3) stand-alone meteorological stations at the Site to monitor and report the meteorological data required under Section 4.9.2. Seller shall maintain the meteorological station as necessary to provide accurate data with respect to the location of the Facility.

4.9.2 Upon Commercial Operation, and continuing through the end of the Term, Seller shall record and maintain the following data:

- (i) real power production by the Facility for each Hour;
- (ii) changes in operating status and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Facility; and
- (v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Facility: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, precipitation, barometric pressure, back of module surface temperature and other pertinent meteorological conditions.

Gulf Power shall have real-time access to the required meteorological data at a frequency not to exceed every five (5) minutes. Seller shall provide Gulf Power a report within fifteen (15) Days after the end of each Month that provides the foregoing information for such Month as well as any other additional information that Gulf Power reasonably requests regarding the operation of the Facility that is collected and maintained by Seller in the ordinary course of Facility operations. Gulf Power reserves the right to validate any of the meteorological data provided by Seller with information publicly available from NOAA and nearby weather stations.

4.9.3 Seller shall make available to Gulf Power all data from any weather monitoring portals Seller elects to install at the Site.

ARTICLE 5: PERFORMANCE SECURITY

5.1 Seller's Provision of Performance Security.

5.1.1 If at any time there shall occur or exist a Security Posting Condition with respect to Seller, then Seller shall immediately notify Gulf Power thereof and, within three (3) Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Gulf Power, Performance Security that secures all of Seller's obligations to Gulf Power under this Agreement, in an amount not less than the Required Seller Post Amount. The Parties acknowledge and agree that, as of the Effective Date, a Security Posting Condition exists with respect to Seller and, accordingly, Seller shall provide such Performance Security to Gulf Power on the Effective Date and thereafter maintain such Performance Security in accordance with this Agreement.

5.1.2 So long as no Event of Default by or attributable to Seller and no Security Posting Condition shall have occurred and be continuing, Gulf Power shall cooperate with Seller, at Seller's request and expense, to release and return to Seller the Performance Security theretofore provided by Seller to and then held by Gulf Power.

5.1.3 If, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be more than the amount of the Performance Security provided by Seller to and then held by Gulf Power, Seller shall, within three (3) Business Days of Gulf Power's request, have additional Performance Security in the amount of such difference provided to Gulf Power. So long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, if, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be less than the amount of the Performance Security theretofore provided by Seller to and then held by Gulf Power, Gulf Power shall cooperate with Seller, at Seller's request and expense, to have the Performance Security then held by Gulf Power reduced by the amount of such difference, subject to Seller's obligation to thereafter provide to Gulf Power and maintain Performance Security in order to comply with the provisions of this Agreement.

5.1.4 For the avoidance of doubt, in the event that Gulf Power draws upon and/or realizes payment from the Performance Security provided by Seller under this Agreement, immediately upon such draw or payment, Seller shall provide to Gulf Power an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Gulf Power hereunder continues to be equal to or greater than the Required Seller Post Amount.



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5.1.5 If at any time a guaranty provided by Seller as a Seller Guaranty no longer satisfies the definition of Seller Guaranty under this Agreement (including due to the guarantor having a Material Adverse Financial Condition), Seller shall provide Gulf Power with other Performance Security that satisfies the requirements of this Agreement within three (3) Business Days of such occurrence and thereafter maintain such Performance Security pursuant to this Agreement.

5.2 Use of Performance Security. Gulf Power shall be entitled to draw upon and/or be paid from the Performance Security provided by Seller: (i) for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Event of Default has occurred, a termination date has been declared under Section 11.3, or this Agreement has expired or otherwise been terminated; (ii) if such Performance Security is within ninety (90) Days of expiry, expiration or termination and substitute or replacement Performance Security that satisfies the requirements of this Agreement as to form, issuer and amount has not been provided; and/or (iii) otherwise in compliance with the terms of such Performance Security.

5.3 Return of Performance Security. Gulf Power shall return the Performance Security to Seller upon the later to occur of: (i) the expiration or termination of this Agreement; and (ii) the indefeasible and irrevocable payment and performance of all of Seller's obligations under this Agreement.

## ARTICLE 6: INTERCONNECTION AND METERING

### 6.1 Interconnection.

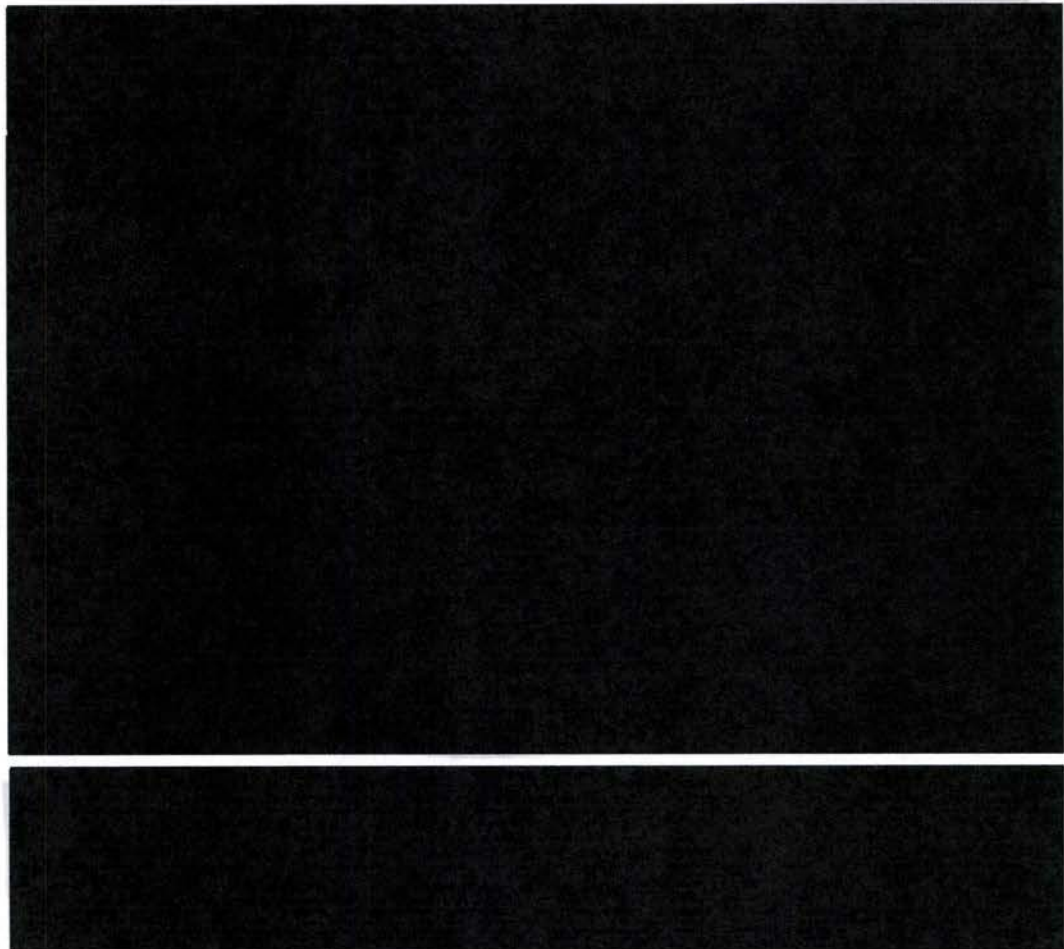
6.1.1 Seller represents that as of the Effective Date, it has submitted pursuant to the applicable interconnection process of the Transmission Provider, a request for Energy Resource Interconnection Service (as defined in the Southern OATT) (or equivalent interconnection service if the applicable interconnection process is not under the Southern OATT) in order to interconnect the Facility to the Electric System. Seller shall maintain and use diligent efforts to pursue such interconnection of the Facility in accordance with the applicable interconnection process, including the timely execution and submission of all required study agreements, fees, deposits and other charges. Seller shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.

6.1.2 If at any time, based on interconnection studies or otherwise, Gulf Power determines that the Transmission Provider and/or Gulf Power will be responsible, in the aggregate, for costs and expenses under the Interconnection Agreement (including costs and expenses associated with Network Upgrades (as defined the Interconnection Agreement) and all amounts that would be required to be repaid or refunded to Seller in connection with Network Upgrades and related interest and tax payments) in an amount that exceeds the Interconnection Cost Threshold, Gulf Power shall be entitled to terminate this Agreement by providing notice to Seller. Upon such termination, neither Party shall have any further

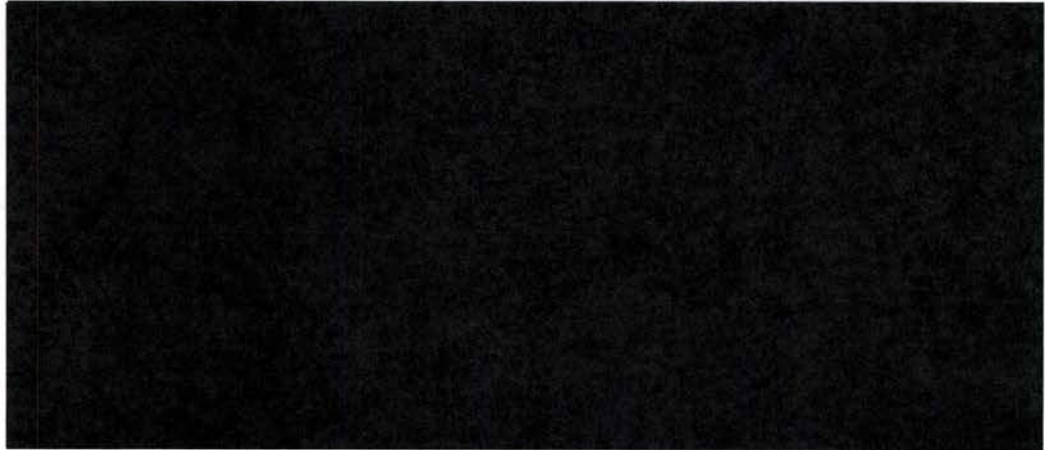
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liability or obligation under this Agreement, except for liabilities and obligations that survive termination as provided in this Agreement or which accrue prior to or at termination.

6.1.3 Seller shall use diligent efforts to execute an Interconnection Agreement with Transmission Provider within thirty (30) Days of being presented with an executable version of the Interconnection Agreement. The Parties agree that the Interconnection Agreement shall contain terms and conditions that are consistent with the Interconnection Requirements set forth in Appendix H, as well as other material terms, conditions and requirements pursuant to the interconnection policies and requirements of the Transmission Provider and its Affiliates. Thereafter, the Interconnection Agreement shall be maintained throughout the Term of this Agreement. Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Gulf Power in accordance with the notice provisions of Section 17.11. Gulf Power shall not be responsible under this Agreement for any costs and expenses (including overheads) incurred in connection with the design, construction, installation and maintenance of the facilities under the Interconnection Agreement. Seller is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.







6.1.6 If the Facility does not reach Commercial Operation, and if costs relating to transmission or other Transmission Provider Installed Facilities were incurred in connection with this Agreement or the Interconnection Agreement, in addition to Seller's other obligations under this Agreement (including under Section 2.6), Seller shall owe and be liable to Gulf Power for such costs.

6.2 Metering.

6.2.1 The Parties shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Industry Practices in order to measure and record the amount of Solar Energy delivered from the Facility to the Point of Delivery. The meters shall be of a mutually acceptable accuracy range and type. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by Gulf Power for the purpose of determining the amount of Solar Energy delivered to the Point of Delivery. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Gulf Power. Seller, may, at its own cost, install additional meters or other such facilities, equipment or devices on Seller's side of the Point of Delivery as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Gulf Power will be entitled to base its invoiced amounts solely by reference to its own Metering System.

6.2.2 Gulf Power shall inspect and test all meters at such times as will conform to Prudent Industry Practices, but not less often than every two (2) Annual Periods. Upon reasonable written request to Gulf Power, Seller may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Annual Periods. Seller shall be responsible, and shall reimburse Gulf Power, for all costs and expenses incurred by or on behalf of Gulf Power in connection with such inspections or tests.

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6.2.3 If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the metering System to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Gulf Power shall pay Seller any additional amounts then due for deliveries of Solar Energy during the Adjustment Period or Gulf Power shall be entitled to a credit against any subsequent payments for Solar Energy, as the case may be.

6.2.4 Without limiting the requirements of Section 6.2.1, Gulf Power and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of Seller's metering equipment.

## ARTICLE 7: PURCHASE AND SALE OF ENERGY; ENVIRONMENTAL ATTRIBUTES; TRANSMISSION AND CURTAILMENT

### 7.1 Energy.

7.1.1 During each Annual Period, Seller agrees to sell and deliver to the Point of Delivery, and Gulf Power agrees to purchase and receive at the Point of Delivery, one hundred percent (100%) of the Solar Energy generated by the Facility and delivered by Seller to the Point of Delivery. Seller shall provide and deliver to Gulf Power Solar Energy pursuant to this Agreement at all times, and to the extent, that the Facility is available and is capable of producing energy. Seller shall not sell or provide Solar Energy to any Person other than Gulf Power. In addition, Gulf Power shall be entitled to all revenues that may be received by Seller from any other Person(s) for any and all Electrical Products.

7.1.2 Appendix F provides the method for determining Seller's expectation of the nominal annual amounts of Solar Energy to be delivered to Gulf Power, having taken into consideration expected solar panel degradation, which constitute the "Annual Energy Contract Amount." Payments to the Seller for actual Solar Energy delivered to the Point of Delivery will be determined as set forth in Appendix A.



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7.1.3 In consideration of the sale and purchase of Solar Energy under this Agreement, Seller shall transfer to Gulf Power at no additional cost any and all Environmental Attributes associated with such Solar Energy at the time the Solar Energy is delivered to the Point of Delivery, pursuant to Section 7.5.

7.2 Testing and Test Energy and Associated Environmental Attributes. Seller shall not commence initial deliveries of Solar Energy to the Point of Delivery without the prior written consent of Gulf Power. Gulf Power shall purchase Solar Energy (and Seller shall transfer to Gulf Power all associated Environmental Attributes) produced by Seller during Facility testing and start-up procedures at such times and under conditions acceptable to Gulf Power and Seller at a rate equal to seventy percent (70%) of AIER for the relevant hour(s) and otherwise in accordance with the terms of this Agreement. Representatives of Gulf Power shall have the right to be present during any such testing. Gulf Power shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to achieve Commercial Operation, including coordination of the production and delivery of test energy. Seller shall provide Gulf Power not less than thirty (30) Days written notice before any testing to establish the Facility's Commercial Operation Date.

7.3 Title and Risk of Loss. Title and risk of loss of Solar Energy shall pass from Seller to Gulf Power at the Point of Delivery.

7.4 Expansion of the Facility. Seller, or any Affiliates thereof, shall not enter into any contract for the sale of solar energy, Environmental Attributes or Electrical Products from any addition to or expansion of the Facility, until and unless (i) Seller shall have first offered in writing (in the form of a proposal contract) to enter into a contract with Gulf Power on business terms substantially the same, or more favorable to Gulf Power, as those specified in a) any proposal or letter of intent between Seller and any other party with respect thereto or b) this Agreement, and (ii) Gulf Power does not accept such offer within sixty (60) Days of the date presented to Gulf Power in writing (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller) and including a notice to Seller that Gulf Power is ready and willing to enter into a contract reflecting such business terms within ninety (90) Days thereafter (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller). For the avoidance of doubt, nothing in this Section 7.4 shall be construed to abrogate the obligation to sell and purchase renewable energy pursuant to PURPA.

7.5 Provision of Environmental Attributes. In consideration of the purchase of Solar Energy under this Agreement, Seller shall transfer, deliver and otherwise provide to Gulf Power at no additional cost all Environmental Attributes associated with such Solar Energy. Said Environmental Attributes shall be transferred, delivered and otherwise provided to Gulf Power as soon as practicable, but in no event later than thirty (30) Days after the associated Solar Energy was generated.

7.5.1 All Environmental Attributes provided by Seller to Gulf Power under this Agreement shall be sourced from the Facility.

7.5.2 Gulf Power shall have exclusive rights to all Environmental Attributes associated with the Solar Energy, which shall include the exclusive right to: (i) claim that energy from the Facility was generated from a renewable



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type of fuel; (ii) report that it owns the Environmental Attributes to any Governmental Authority or other party for compliance with any Legal Requirement or other purposes; and (iii) claim the Environmental Attributes to customers or potential customers for purposes of marketing and advertising, provided, however, Seller and its Affiliates shall be entitled to issue marketing materials and other statements regarding their respective operations and business activities but only so long as the issuance of such materials and statements does not reduce the economic value to Gulf Power of the Environmental Attributes to be transferred hereunder or otherwise reduce Gulf Power's claims to such Environmental Attributes or result in the double counting of such Environmental Attributes.

7.5.3 Seller shall maintain and provide to Gulf Power (or, if directed by Gulf Power, other applicable Persons) such information as may be necessary to substantiate, account for, and track the quantity of Environmental Attributes associated with the Facility, including all information necessary for Gulf Power to comply with the requirements of any Governmental Authority or other certifying or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Seller shall provide Gulf Power with attestations regarding the accuracy of such information as reasonably requested by Gulf Power. Gulf Power shall have the right to disclose such information publicly or to any third party, without the prior consent of Seller, as reasonably required in connection with the operation of Gulf Power's business, including disclosures: (i) to any entity or person that purchases the Environmental Attributes from Gulf Power; (ii) to any Governmental Authority; (iii) to any auditors or any Person that certifies or sets standards with respect to Environmental Attributes; and (iv) as necessary for Gulf Power to defend, verify or substantiate its ownership of the Environmental Attributes under this Agreement.

7.5.4 At Gulf Power's request, Seller shall take all necessary action, including the completion and submission of all required attestation forms and other information, in order to obtain certification by Green-e Energy pursuant to the Green-e National Standard (or other certification from such other entity designated by Gulf Power) of the Facility and all Environmental Attributes required to be provided under this Agreement. Seller shall be responsible for all costs and expenses associated with obtaining such certification, except for such costs and expenses that are required to be paid to Green-e or other non-Affiliates of Seller, which shall be the responsibility of Gulf Power.

7.5.5 In no way shall the right to, transfer of, or acquisition of Environmental Attributes under this Agreement be deemed to cause Gulf Power to be deemed an owner or operator of the Facility or in any way cause Gulf Power to be responsible for the Facility's compliance with any Legal Requirements.



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### 7.6 Gulf Power Network Transmission.

7.6.1 With respect to the energy required to be delivered to Gulf Power under this Agreement, Gulf Power shall request network transmission service from the Facility on a long-term basis, by requesting the Facility to be designated as a Network Resource, for serving Gulf Power's network load, but only if such designation does not require the construction or installation of transmission upgrades or other facilities on the Electric System (excluding the Transmission Provider Installed Facilities to be constructed pursuant to the Interconnection Agreement to interconnect the Facility to the Electric System). Any such designation that is made available to Gulf Power pursuant to such request shall be obtained and maintained by Gulf Power commencing on the date that energy deliveries begin under this Agreement and thereafter throughout the Term. Such request shall be consistent with the Network Resource process described in Section 30 of the Southern OATT (or any successor provision).

7.6.2 No later than thirty (30) Days after the Interconnection Agreement is executed by Seller and the Transmission Provider, Gulf Power shall confirm to Seller whether the Facility can be designated as a Network Resource from the date that service commences under this Agreement through the end of the Term, without the construction or installation of transmission upgrades or other facilities, as described in Section 7.6.1. In the event such Network Resource designation cannot be made for any reason, then Gulf Power shall notify Seller of the same and this Agreement shall immediately terminate. Upon a termination pursuant to this Section 7.6.2, neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

7.6.3 Notwithstanding the foregoing provisions of this Section 7.6, and for the avoidance of doubt, because network transmission service is the type of service (as opposed to point-to-point service) required for serving Gulf Power's native load, Gulf Power shall have no obligation to procure or obtain point-to-point transmission service or any other type of transmission service on the Electric System other than the service described in Section 7.6.1.

### 7.7 Transmission Curtailment.

7.7.1 Notwithstanding any other provision of this Agreement, Gulf Power shall be entitled to require Seller to curtail or cease energy deliveries under this Agreement during any period to the extent that: (i) there is an Emergency or Gulf Power reasonably anticipates that an Emergency will occur; (ii) there is a Transmission Curtailment Event occurring or existing; or (iii) Gulf Power is unable to receive Solar Energy from the Facility at the Point of Delivery, or Gulf Power is unable to transmit such energy to Gulf Power's customers, due to a Force Majeure Event affecting Gulf Power or its systems, facilities or equipment. Seller shall comply with any such requirement as directed by Gulf Power, and



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Gulf Power shall be relieved from the obligation to purchase and receive Solar Energy to the extent of the required curtailment or cessation of deliveries. The amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.7.1 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.7.2 Under no circumstance will Gulf Power be required to take any of the following actions in order to facilitate or enable energy under this Agreement to be received by, or transmitted or delivered to, any Person: (i) the construction or installation of any additions or upgrades to any transmission or distribution facilities (except as specifically provided in the Interconnection Agreement); (ii) the curtailment or interruption of service to any customer of Gulf Power or any of its Affiliates; or (iii) the undertaking of congestion management procedures (including redispatch of any other generation resource).

7.8 Curtailments under the Interconnection Agreement. Gulf Power shall be entitled to require Seller to curtail or cease deliveries of Solar Energy under this Agreement or disconnect the Facility from the Electric System for any of the reasons set forth in the Interconnection Agreement and during periods of maintenance, repair or replacement of interconnection facilities, including Seller Installed Facilities, owned and operated by Gulf Power. In such event, Gulf Power shall be relieved from the obligation to purchase and receive energy to the extent of the required curtailment, cessation and/or disconnection, and such energy that Gulf Power is not required to purchase and receive shall be excluded from the determination of Annual and Monthly Delivered Energy for all purposes of this Agreement. Except to the extent that such required curtailment or cessation of deliveries is due to a condition or circumstance existing with respect to Seller's facilities or equipment, the amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.8 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

### 7.9 Other Operational Curtailments.

7.9.1 In addition to any required curtailment or cessation of deliveries for the reasons set forth in Section 7.7 or Section 7.8, Gulf Power shall be entitled to require Seller to curtail or cease the delivery of energy under this Agreement in Gulf Power's discretion due to operational reasons associated with load balancing. Seller shall comply with any such requirement as directed by Gulf Power. Any hour for which Gulf Power directs the curtailment or cessation of deliveries of energy under this Section 7.9.1 (excluding the curtailment or cessation of deliveries required by Gulf Power for a reason under Section 7.7 or Section 7.8) shall be referred to as a "Load Balancing Hour".



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7.9.2 The amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive under Section 7.9.1 for the first twenty (20) Load Balancing Hours of each Calendar Year shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.9.3 If Gulf Power requires the curtailment or cessation of deliveries under Section 7.9.1 in excess of twenty (20) Load Balancing Hours in a given Calendar Year, then the amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive(s) under Section 7.9.1 during such excess Load Balancing Hours shall constitute Deemed Delivered Energy. Such Deemed Delivered Energy will be included in both the Annual Delivery Percentage and Annual and Monthly Delivered Energy calculations in Appendix A.

7.10 Determination. In the event that Gulf Power exercises its rights to require the curtailment or cessation of deliveries of energy as provided in Section 7.7, Section 7.8, or Section 7.9, then the resulting amounts of Curtailed Energy and Deemed Delivered Energy (as applicable) shall be determined by an agreed upon methodology approved by the Operating Committee, which shall take into account, for the relevant time period, Facility availability information, weather conditions and other pertinent Facility data. In addition, notwithstanding any other provision of this Agreement, there shall be no amounts of Curtailed Energy or Deemed Delivered Energy attributable to periods prior to COD.

## ARTICLE 8: MONTHLY ENERGY PAYMENTS

### 8.1 Monthly Energy Payments.

8.1.1 Gulf Power shall pay Seller a Monthly Energy Payment in accordance with Appendix A for Solar Energy delivered to the Point of Delivery by Seller during each Annual Period. If a true-up pursuant to the provisions of Section 2 of Appendix A results in an over/under payment for a Calendar Year, then, following notice by Gulf Power of such over/under payment, and unless the Parties agree otherwise, Seller shall remit the overpayment amount, or receive the underpayment amount, in full from the next succeeding twelve (12) Monthly Energy Payment(s) until such over/under payment is satisfied in full; provided that for an over/under payment determined at the end of the Term, Seller shall remit the total overpayment, or receive the total underpayment amount, within twenty (20) Days after such amount is determined by Gulf Power.

8.1.2 Seller acknowledges and agrees that all price information provided by Gulf Power to Seller is Confidential Information subject to Section 17.16.

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8.1.3 Gulf Power's obligation to pay the Monthly Energy Payment shall commence for Solar Energy deliveries on and after the Commercial Operation Date.

### ARTICLE 9: PAYMENT PROCEDURE

#### 9.1 Billing and Payment.

9.1.1 As promptly as practicable after the first Month that energy deliveries commence under this Agreement and each Month of the Term thereafter, Gulf Power shall provide Seller with the meter readings for such Month no later than the fifteenth (15th) Business Day of the following Month.

9.1.2 Within ten (10) Business Days of receipt of the Monthly meter readings, Seller shall provide Gulf Power with an invoice stating the Monthly Energy Payment calculated for such Month pursuant to Section 8.1.

9.1.3 At the option of Seller, Gulf Power will provide a net payment or net bill, whichever is applicable, that consolidates amounts owing to Seller with amounts owing to Gulf Power.

9.1.4 Each Monthly payment shall be due and payable on or before the twentieth (20th) Day after a Party's receipt of such invoice. If such twentieth (20th) Day after a Party's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Payment of an invoice shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before such twentieth (20th) Day, then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded at the Interest Rate.

#### 9.2 Billing Disputes and Final Accounting.

9.2.1 The Parties shall each have until the three hundred sixty-fifth (365th) Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

9.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party (the "Billing Dispute Notice") that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount.



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9.2.3 In the event that a Party, by timely notice in accordance with Sections 9.2.1 and 9.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within twenty (20) Days following receipt by the other Party of the Billing Dispute Notice, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error (the "Dispute Review Notice"). Reimbursements determined to be due from a Party under this Section 9.2.3 shall be included on the next Monthly invoice and shall include interest from the date the original payment was received until the date such reimbursement together with interest is invoiced, which interest shall be compounded at the Interest Rate.

9.2.4 In the event a Party disputes the other Party's resolution under Section 9.2.3 of any question or contest by such Party of the correctness of any charge or credit contained in a Monthly invoice, then the Parties shall submit the dispute for resolution in accordance with Article 16.

## ARTICLE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants. Seller makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.1.1 Seller is a limited liability company, duly organized and validly existing under the laws of the state of Florida, is the sole owner of the Facility and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.1.2 The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, any charter, bylaw, operating agreement or other formation or organizational document of Seller, or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound.

10.1.4 This Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may



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be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.1.5 There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof or that could reasonably be expected to have a material adverse effect on Seller.

10.1.6 Seller covenants to Gulf Power that it shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance (and specifically including any increase in property taxes or ad valorem taxes that result from the existence of the Facility on the Site); (ii) the production, sale and delivery of Solar Energy under this Agreement; and (iii) the production and provision of Environmental Attributes under this Agreement, in any case of the foregoing (i), (ii) or (iii) whether such charges, taxes, assessments or fees are assessed on Seller or Gulf Power. It is the intent of the Parties that such charges, taxes, assessments or fees for which Seller is responsible shall include any sales, transfer and other similar charges, taxes, assessments or fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement and the provision of Environmental Attributes to Gulf Power under this Agreement, whether the same are imposed on Seller or Gulf Power.

10.1.7 From the Effective Date through the end of the Term, Seller covenants that from its perspective and due to any of Seller's actions, Gulf Power will not be required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by the Financial Accounting Standards Board, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements. Seller covenants to promptly notify Gulf Power following any determination made by Seller or its independent auditor that Seller constitutes a VIE for which Gulf Power is the Primary Beneficiary as a result of this Agreement considered individually or together with any other power purchase agreements between Seller and Gulf Power. At the time of execution of this Agreement and thereafter prior to each June 1 occurring during the Term, Seller shall provide Gulf Power a VIE certification form in the form of Appendix D signed by the chief financial officer of Seller.

10.1.8 Seller shall enter into the Interconnection Agreement and remain in compliance with the Interconnection Agreement.



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10.1.9 With respect to the Environmental Attributes provided to Gulf Power under this Agreement, Seller represents, warrants and covenants throughout each Annual Period that:

10.1.9.1 Seller has, and shall transfer to Gulf Power good and marketable title to such Environmental Attributes;

10.1.9.2 Such Environmental Attributes satisfy and comply with all of the requirements of the Green-e National Standard for certification by Green-e and therefore constitute certifiable Green-e Renewable Energy Certificates; provided that the Parties recognize that, as of the Effective Date, Green-e will only certify Renewable Energy Certificates from a given generation facility as being eligible for meeting the Green-e National Standard for a fifteen (15) year term and Seller shall not be in violation of this Section 10.1.9.2 solely by reason of the age of the Facility exceeding any Green-e facility age limitations (as of the Effective Date or in the future).

10.1.9.3 Seller has the right to, and shall, deliver and provide all Environmental Attributes (and all rights, title and interest to such Environmental Attributes) to Gulf Power free and clear of any liens, taxes, claims, security interests and any other encumbrances;

10.1.9.4 Seller has not sold or transferred any of the Environmental Attributes to any other Person;

10.1.9.5 The Environmental Attributes are separate from the electric energy generated by the Facility;

10.1.9.6 Neither the Environmental Attributes nor the electric energy that was generated with the Environmental Attributes have been utilized by Seller or any Person (other than Gulf Power or any person to whom Gulf Power sells or transfers the same) to satisfy or comply with any Legal Requirement or any voluntary or involuntary renewable energy requirement or standard, including any renewable portfolio standard, renewable energy standard or any other similar standard or requirement;

10.1.9.7 The Environmental Attributes include all those products or rights relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits, in each case as specified in and required by the definition of Environmental Attributes, and they have not been used to satisfy or comply with other greenhouse gas or carbon reduction requirements, standards, obligations, or initiatives. The electric energy that was generated with the Environmental Attributes has not been sold, separately marketed or otherwise separately represented as renewable energy by any other person;

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10.1.9.8 To Seller's knowledge, no Person has made any claim or statement in any form that a Person other than Gulf Power or any person to whom Gulf Power sells or transfers the same owns or possesses any right, title, or interest in or to any of the Environmental Attributes;

10.1.9.9 Except as permitted under Section 7.5.2, neither Seller nor any of its Affiliates has made any claim or statement in any form that the energy that was generated with the Environmental Attributes was generated from solar rays or other sustainable, perpetual, renewable or other particular type of fuel, including: (i) in any marketing or advertising materials; (ii) any product content label or other disclosures regarding fuel mix; (iii) any reports under any emissions trading program, public or private; or (iv) any report or disclosure for purposes of complying with a Legal Requirement of meeting any renewable portfolio standard, renewable energy standard, or carbon reduction initiative (whether voluntary or involuntary);

10.1.9.10 No Environmental Attributes required to be transferred to Gulf Power under this Agreement violate any applicable rules or requirements of any certification authority (whether with respect to voluntary or involuntary certification) or Governmental Authority pertaining to double counting; and

10.1.9.11 Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

10.1.10 Nothing in Section 10.1.9 shall be interpreted or construed as relieving or diminishing any obligation of Seller to provide Environmental Attributes that are in conformance with the requirements of Section 7.5.

10.2 Gulf Power Representations, Warranties and Covenants. Gulf Power makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.2.1 Gulf Power is a corporation, duly organized and validly existing under the laws of the state of Florida and has the legal power and authority to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.2.2 The execution, delivery and performance by Gulf Power of this Agreement have been duly authorized by all necessary corporate action, and



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do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or any charter, bylaw, or other formation or organizational document of Gulf Power, or any agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Gulf Power is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

10.2.4 This Agreement is the legal, valid and binding obligation of Gulf Power enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.2.5 There is no pending, or to the knowledge of Gulf Power, threatened action or proceeding affecting Gulf Power before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

10.2.6 Gulf Power shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to subsequent sales made by Gulf Power to other Persons of the Solar Energy and Environmental Attributes received by Gulf Power under this Agreement. It is the intent of the Parties that such charges, taxes, assessments and fees for which Gulf Power is responsible shall not include any sales, transfer and other similar charges, taxes, assessments and fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement or the provision of Environmental Attributes to Gulf Power under this Agreement.

10.3 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by Seller and by Gulf Power in or under this Agreement shall survive the execution and delivery of this Agreement and any action taken pursuant hereto.

## ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1 Default by Seller. Any one or more of the following events shall constitute an Event of Default by Seller and shall give Gulf Power the right to exercise the remedies specified in Section 11.3:

11.1.1 Seller: (i) sells or provides Solar Energy or Environmental Attributes from the Facility to a third party during any Annual Period, except for any sales solely attributable to any additional or expanded portion of the Facility



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for which Seller had complied with Section 7.4 and Gulf Power has declined to accept the offer for such Solar Energy under Section 7.4, or (ii) makes any sales of Solar Energy from the Facility in violation of PURPA, as applicable.

11.1.2 Seller fails to comply or cause compliance with the requirements of Article 5 unless cured by the end of the next Business Day following receipt of a written notice from Gulf Power of a failure under this Section 11.1.2.

11.1.3 Seller fails to provide Gulf Power with the Minimum Energy Contract Amount for two consecutive Calendar Years, provided, however, that any Curtailed Energy for a Calendar Year shall count toward the Minimum Energy Contract Amount for such Calendar Year for the purpose of this Section 11.1.3.

11.1.4 Seller fails to pay Gulf Power any undisputed amount payable by Seller to Gulf Power pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Seller fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Gulf Power.

11.1.5 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, which was sought by an entity other than Seller, adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

11.1.6 Seller shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Seller of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.



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11.1.7 A violation of the requirements of Section 17.1.1 through a sale, assignment or transfer of this Agreement, or a violation of Section 17.2.

11.1.8 Any representation or warranty made by Seller herein or in any certificate delivered to Gulf Power pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Gulf Power of such representation or warranty having been incorrect;

11.1.9 Any failure of any covenant made by Seller in Section 10.1.7 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller must submit a cure plan prior to the end of such thirty (30) Day period outlining steps to assure Gulf Power that the failure will be cured, which cure plan shall be subject to Gulf Power's approval, such approval not to be unreasonably withheld, conditioned or delayed by Gulf Power, but in no event shall the total cure period exceed one hundred and eighty (180) Days) and such cure removes any adverse effect on Gulf Power of such failure of such covenant; provided, however, that no Event of Default by Seller shall occur pursuant to this Section 11.1.9 if Seller cooperates with Gulf Power during the cure period and Seller takes commercially reasonable actions (without causing a material adverse effect on Gulf Power) necessary to bring about a determination by the end of the cure period by Gulf Power and its independent auditor that Seller does not constitute a VIE in Gulf Power's or any of its Affiliates' financial statements for which Gulf Power is the Primary Beneficiary as a result of this Agreement; provided, further, if Gulf Power becomes a Primary Beneficiary by no fault of Seller and a cure cannot be effected within the cure period, Gulf Power may terminate this Agreement, Seller shall not have any further obligation or liability to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.10 Gulf Power is required by any Legal Requirement or any accounting standard, including those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements and such condition continues for a period of thirty (30) Days after written notice thereof from Gulf Power unless such cure is not capable of being effected within such thirty (30) Day



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period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days. Gulf Power may seek remedies pursuant to Section 11.3 for an Event of Default caused under this Section 11.1.10; provided, however, upon termination of this Agreement, if the Seller is able to clearly demonstrate that the Event of Default was not caused by any direct or indirect action by Seller, then Seller shall have no further liability or obligation to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.11 The Ground Lease is terminated by Gulf Power due to the default or breach of the Ground Lease by Seller; or

11.1.12 Seller fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.1.1 through 11.1.11, unless Seller cures such failure within thirty (30) Days after a written demand by Gulf Power to do so and such cure removes any adverse effect on Gulf Power resulting from such failure

11.2 Default by Gulf Power. Any one or more of the following events shall constitute an Event of Default by Gulf Power and shall give Seller the right to exercise the remedies specified in Section 11.3:

11.2.1 Gulf Power fails to pay Seller any undisputed amount payable by Gulf Power to Seller pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Gulf Power fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Seller.

11.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Gulf Power in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Gulf Power bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Gulf Power under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Gulf Power or of any substantial part of its affairs.

11.2.3 Gulf Power shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Gulf Power in any involuntary case or proceeding under



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any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Gulf Power of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Gulf Power or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

11.2.4 A violation of the requirements of Section 17.1.2 through an assignment or transfer of this Agreement.

11.2.5 Any representation or warranty made by Gulf Power herein or in any certificate delivered to Seller pursuant hereto shall prove to be incorrect in any material respect when made, unless Gulf Power shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Gulf Power by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Gulf Power shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

11.2.6 The Ground Lease is terminated by Seller due to the default or breach of the Ground Lease by Gulf Power; or

11.2.7 Gulf Power fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.2.1 through 11.2.6, unless Gulf Power cures such failure within thirty (30) Days after a written demand by Seller to do so and such cure removes any adverse effect on Seller resulting from such failure.

### 11.3 Remedies for Events of Default.

11.3.1 Upon the occurrence of an Event of Default, the non-defaulting Party ("Non-Defaulting Party") shall be entitled to take one or more of the following actions in its discretion: (i) terminate this Agreement by giving written notice thereof to the defaulting Party ("Defaulting Party") setting a termination date, and recover liquidated damages from the Defaulting Party pursuant to Section 11.3.2, which liquidated damages shall be paid by the Defaulting Party to the Non-Defaulting Party within three (3) Business Days after such termination date is set by the Non-Defaulting Party; (ii) if the Event of Default is for the failure to pay an amount of money pursuant to this Agreement (including any failure by the Defaulting Party to indemnify the Non-Defaulting



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Party under Article 13), pursue an action for damages equal to the amount of money not paid, pursuant to the procedure in Article 16; (iii) with respect to Gulf Power as the Non-Defaulting Party, if the Event of Default is due to Seller's failure to provide Environmental Attributes in accordance with this Agreement or if any of the representations, warranties or covenants set forth herein with respect to Environmental Attributes are untrue or not satisfied, Gulf Power may pursue an action against Seller for damages equal to the costs and expenses associated with procuring replacement Environmental Attributes (as applicable); and/or (iv) proceed by appropriate proceedings in equity. The foregoing remedies shall be in addition to, and not in lieu of, any remedies the Parties may have under the Ground Lease or any other agreement between the Parties.

11.3.2 If the Non-Defaulting Party terminates this Agreement pursuant to Section 11.3.1, the liquidated damages required to be paid by the Defaulting Party shall be equal to: (i) if the Defaulting Party is Gulf Power, an amount equal to the Buyer Amount that applies for the period during which such termination occurs, as determined under Appendix J; or (ii) if the Defaulting Party is Seller, an amount equal to the Seller Amount that applies for the period during which such termination occurs, as determined under Appendix J, less (but only if such termination occurs after the Commercial Operation Date) the Site Remediation Amount that applies at the time of such termination (provided that in addition to the payment of such liquidated damages, Seller shall also have those liabilities and obligations set forth in Section 3.3).

11.4 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSE HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, AND IN SUCH EVENT SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES FOR WHICH INDEMNIFICATION IS PROVIDED UNDER THIS AGREEMENT. TO THE EXTENT THE DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.5 Disclaimer of Warranties. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THE TEXT HEREOF. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.



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11.6 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

### ARTICLE 12: COMPLIANCE WITH LAWS

12.1 Compliance. Seller represents, warrants and covenants that throughout the Term, Seller shall (i) be in compliance with all Legal Requirements with respect to the design, construction, ownership, operation and maintenance of the Facility, including all required Consents, and if applicable, the mitigation of environmental impacts, and (ii) pay all costs, expenses, charges and fees in connection therewith.

12.2 Approvals. Seller and Gulf Power each agree to use diligent efforts to apply for promptly and to pursue any required acceptances or approvals from Governmental Authorities for the consummation of the transactions contemplated by this Agreement or for the giving of effect to the expiration of this Agreement or any termination of this Agreement. This provision is not intended to subject this Agreement to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement as of the Effective Date.

12.3 Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur additional costs in carrying out its obligations under this Agreement, such Party agrees to pay all costs associated with such Change of Law and acknowledges that the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur a reduction in costs that are projected to decrease such Party's costs in carrying out its obligations under this Agreement, such realized savings shall be retained by such Party and the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law.

12.4 Federal Acquisitions Regulations Compliance. Gulf Power is a government contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government, and as such, is required to conduct business with entities in compliance with the regulations contained herein. Accordingly, Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995);
- (iii) 52.203-7 Anti-Kickback Procedures (JUL 1995);
- (iv) 52.219-8 Utilization of Small Business Concerns (MAY 2004);
- (v) 52.222-21 Prohibition of Segregated Facilities (FEB 1999); and
- (vi) 52.222-26 Equal Opportunity (APR 2002).



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Upon written request, Gulf Power will provide the full text of any of the above sections incorporated herein by reference. Seller warrants and represents that neither it nor any of its Affiliates, agents, contractors or subcontractors is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that Seller or any of its Affiliates, agents, contractors or subcontractors become debarred, suspended or proposed for debarment during the term of this Agreement, Seller will immediately notify Gulf Power verbally and in writing.

### ARTICLE 13: INDEMNIFICATION

13.1 Scope of Indemnity. Each Party (the "Indemnifying Party") expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, agents, officers, directors, employees, members and permitted assigns ("Indemnified Party") against all claims, liability, fines, costs or expenses imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (i) Indemnifying Party's acts and omissions in connection with its performance, or failure to perform obligations or representations and warranties under this Agreement; (ii) Indemnifying Party's activities (including prior uses of third parties) on the Indemnifying Party's respective side of the Point of Delivery; (iii) any negligence or willful misconduct of the Indemnifying Party; and (iv) in the case of Gulf Power as the Indemnifying Party, the exercise of Gulf Power's rights to access or inspect the Facility under Section 4.2.1.

13.2 Notice of Proceedings. An Indemnified Party that becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice prejudices the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

13.3 Survival; No Insurance Limitation. All provisions of this Article 13 shall survive termination of this Agreement, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination. Seller's indemnity obligations contained in this Agreement shall be independent of and shall not be limited by or limit the obligations of Seller under Article 14.



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### ARTICLE 14: INSURANCE

14.1 Insurance Required of Seller. During the Term, Seller shall acquire and maintain, at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in this Article 14.

14.2 Proof of Insurance. Gulf Power may, in its sole discretion, require Seller to deliver to Gulf Power, at any time during the Term, but at least thirty (30) Days after the Effective Date and thereafter annually on the RCOD anniversary, a certificate of insurance certifying Seller's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the state of Florida naming Seller as a named insured and Gulf Power as an additional insured.

14.3 General Terms. All insurance must be with insurers: (i) holding a Best's rating of at least A- VII or equivalent; (ii) whose financial condition and policy forms are acceptable to Company; and (iii) authorized to transact insurance in the state of Florida. Upon commencement of operation of the Facility, the required insurance coverage shall contain a broad form contractual endorsement specifically covering liabilities arising out of or caused by the operation of the Facility or by Seller's failure to maintain the Facility in satisfactory and safe operating condition. Seller's insurance must be primary for all services provided to Gulf Power. Insurance or self-insurance maintained by Gulf Power or other additional insureds is in excess of Seller's insurance, contingent and non-contributory. To the extent allowed by applicable law, Gulf Power, Southern Company and Affiliates, and each of their officers, directors, employees, representatives, and agents, as well as each other person or entity so identified in the Agreement, must be additional insured under the commercial general liability policy. To the extent allowed by applicable law, Seller waives, and must require its insurers to waive, a right of subrogation against Gulf Power, Southern Company, and its Affiliates, and each of their officers, directors, employees, representatives, and agents, for the commercial general liability policy and the workers' compensation policy.

14.4 General Liability Insurance. The insurance policy shall provide the following coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement:

- a. Commercial general liability insurance in an "occurrence" form with bodily injury and property damage combined liability limits of not less than five million dollars (\$5,000,000.00) per occurrence; provided, however, Seller may use umbrella coverage to satisfy the total five million (\$5,000,000.00) coverage requirement (e.g. combine one million dollars (\$1,000,000.00) in commercial general liability insurance as described above with four million dollars (\$4,000,000.00) in umbrella coverage).
- b. Specific coverage for broad form contractual liability including Seller's indemnification obligations under this Agreement and a separation of insured provision.



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- c. Coverage on an "occurrence" basis; provided, however, that coverage may be provided on a "claims made" basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement.

14.5 Statutory Worker's Compensation Insurance. Seller shall acquire and maintain statutory worker's compensation insurance covering Seller's legal liability under the applicable state or federal worker's compensation or occupational disease laws and employer's liability of at least five hundred thousand dollars (\$500,000.00).

14.6 Notice of Change or Cancellation. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify Gulf Power at least thirty (30) Days prior the effective date of any cancellation, with the exception of 10 days' notice for nonpayment of premium. If notice of cancellation is only commercially available to the Seller's attention, then Seller shall forward such thirty (30) Day (or 10 days for non-payment of premium) advance notice to Gulf Power immediately upon receipt. Furthermore, Seller agrees to notify Gulf Power at least thirty (30) Days prior to the effective date of any known material change in the policy.

14.7 Payment of Premiums. Seller shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the Term of this Agreement.

14.8 No Waiver of Liability. The provisions requiring Seller to acquire and maintain insurance under this Agreement shall not be construed as a waiver, restriction or limitation of any liability imposed on Seller under this Agreement, whether or not the same is covered by insurance. It is the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal and contractually assumed liability of Seller, any payments due as a result of such liability shall be made first from the proceeds of such policies.

## ARTICLE 15: FORCE MAJEURE

15.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that prevents a Party, in whole or in part, from performing any of its obligations or satisfying any conditions under this Agreement and that is beyond the reasonable control of such Party and is not caused by such Party's negligence, lack of due diligence, or failure to follow Prudent Industry Practices. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site-specific strike, walkout, lockout or other labor dispute at the Facility; (iii) equipment failure or equipment damage, in the case of the Facility only, unless such equipment failure or equipment damage results directly from an act of God; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services; (v) failures of Seller's contractors, suppliers or vendors, unless such failures are caused by an event that would otherwise constitute a Force Majeure Event if experienced directly by Seller; (vi) unavailability, variability or lack of adequate solar insolation or photovoltaic or solar rays to any extent and for any reason; (vii) Seller's inability to arrange or maintain transmission/distribution service for deliveries to the Point of Delivery; or (viii) any event, including a change in any Legal Requirement or



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accounting standard, that results in requiring Gulf Power to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's financial statements.

15.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and shall not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform such obligations is due to a Force Majeure Event.

15.3 Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

- (i) give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;
- (ii) remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section 15.3 shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (iii) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification from an independent, registered engineer that the Force Majeure Event has been cured.

15.4 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the stated Term.

### 15.5 Extended Force Majeure Event.

15.5.1 If a Party has reason to believe that a Force Majeure Event, which is preventing the other Party from performing its obligations hereunder will result in a suspension of such performance for a term of six (6) Months or longer (an "Extended Force Majeure Event") (including, in the case of a Force Majeure Event affecting Seller or the Facility, the circumstance where the capability of the Facility to generate and deliver energy is reduced as a result of a Force Majeure Event for a term of six (6) Months or longer), that Party may request that the other Party submit a "Force Majeure Remedy Plan," which the other Party shall submit to the requesting Party within thirty (30) Days of the request. If the Party claiming an excuse under this Section 15 has reason to believe that a Force Majeure Event is an Extended Force Majeure Event, it shall notify the other Party promptly and shall submit a Force Majeure Remedy Plan to the other Party within thirty (30) Days thereafter. The Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions that should permit



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the affected Party to perform its obligations under this Agreement as soon as reasonably practicable.

15.5.2 While a Force Majeure Remedy Plan is in effect, the Party prevented from performing its obligations due to the Extended Force Majeure Event shall provide Monthly status reports to the other Party notifying the other Party of the steps that have been taken to remedy the Extended Force Majeure Event and the expected remaining duration of the Party's inability to perform its obligations.

15.5.3 The Party not prevented from performing its obligations due to the Extended Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the other Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 15.5; (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to cause that Party to be able to perform its obligations hereunder; or (iii) the affected Party remains unable to perform its obligations hereunder twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section 15.5.3, the twelve (12)-Month period need not be continuous if, and only if, each period of suspension of performance comprising the twelve (12)-Month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

15.5.4 Upon termination of this Agreement as provided in this Section 15.5, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

## ARTICLE 16: DISPUTE RESOLUTION

16.1 Notice. Either Party ("Aggrieved Party") shall have the right to give notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party's belief and may describe the recommended options to correct the failure.

### 16.2 Dispute Resolution, Arbitration.

16.2.1 Except for a proceeding in equity under Section 11.3.1(iv), any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such dispute or claim to the mutual satisfaction of the



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Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then upon notice by either Party to resolve the matter by arbitration, any such dispute or claim shall be resolved in accordance with Section 16.2.2.

16.2.2 In the event a dispute is not resolved by senior executives under Section 16.2.1 and a Party provides notice to resolve the matter by arbitration, the Parties agree to arbitrate such dispute in accordance with the following procedures:

16.2.2.1 At the request of either Party upon written notice to the other Party (a "Demand"), the dispute shall be finally settled by binding arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

16.2.2.2 The arbitration shall be conducted by a panel of three (3) arbitrators selected as follows:

(i) The Party initiating arbitration shall nominate one (1) arbitrator at the same time it sends the Demand. The other Party shall nominate one (1) arbitrator within twenty (20) Days of receiving the Demand. The two (2) arbitrators ("Party-Appointed Arbitrators") shall appoint a third arbitrator ("Third Arbitrator"). The Party-Appointed Arbitrators and the Third Arbitrator shall be attorneys who are competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of experience in the electric industry, and shall be impartial and independent of either Party and the Party-Appointed Arbitrators. None of the Party-Appointed Arbitrators or Third Arbitrator shall have provided services to either Party or any of their respective Affiliates within the last five (5) years. Each Party shall pay for the expenses incurred by its Party-Appointed Arbitrator and the costs of the Third Arbitrator shall be divided equally between the Parties.

(ii) If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within thirty (30) Days from initiation of arbitration, then the Third Arbitrator shall be selected by the AAA with due regard given to the selection criteria above and input from Seller, Gulf Power and the Party-Appointed Arbitrators. Parties shall undertake to request the AAA to complete selection of the Third Arbitrator no later than ninety (90) Days from the date of the Demand. Costs charged by the AAA for this service shall be borne by the Parties equally.

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(iii) In the event the AAA should fail to select the Third Arbitrator within ninety (90) Days from the date of the Demand, then either Party may petition a court of competent jurisdiction in Florida to select the Third Arbitrator. Due regard shall be given to the selection criteria above and input from the Parties and the Party-Appointed Arbitrators.

(iv) If, prior to the conclusion of the arbitration, a Party-Appointed Arbitrator or the Third Arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

16.2.2.3 The arbitration shall be held in Pensacola, Florida and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

16.2.2.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator. The arbitrator shall be authorized in his or her discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its consent to service of process by mail is made for the express benefit of the other Party.

16.2.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

16.2.2.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 11.4, or any other multiple or enhanced damages, whether statutory or common law.

16.2.3 The Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 16.



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16.2.4 EACH PARTY UNDERSTANDS AND AGREES THAT ARBITRATION UNDER SECTION 16.2.2 IS MANDATORY AND WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR COURT PROCEEDINGS TO DETERMINE THE MATTERS UNDER SECTION 16.2.2 OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT.

### ARTICLE 17: MISCELLANEOUS

#### 17.1 Assignment, Transfers and Changes of Control.

17.1.1 Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Gulf Power and the owner of the Site (which consent shall not be unreasonably withheld, conditioned or delayed). Any proposed assignee of this Agreement shall (i) agree to assume assignor's obligations under this Agreement, the Ground Lease, the Interconnection Agreement and any other applicable agreements or permits, and (ii) deliver to Gulf Power such assurances regarding its creditworthiness and its ability to perform all obligations of Seller hereunder (including its obligation to provide and maintain Performance Security under Article 5), as Gulf Power may reasonably request, and (iii) cooperate with Gulf Power to comply with any Legal Requirements that result from such assignment. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of Seller with respect to such obligations (and any related interests so transferred), and a release and discharge by Gulf Power of Seller from, and an agreement by Gulf Power not to make any claim for payment, liability, or otherwise against Seller with respect to, such obligations from and after the effective date of the assignment; provided, however, Seller may, without the consent of Gulf Power, assign this Agreement to a financing party for collateral security purposes in connection with any financing or refinancing of the Facility; provided further, that such collateral assignment shall not place any limitation on Gulf Power's rights under this Agreement or expand the liability, risks or obligations imposed on Gulf Power under this Agreement. In connection therewith, Gulf Power agrees to execute a written consent to such collateral assignment in a form acceptable to Gulf Power should the financing party reasonably request such an assignment.

17.1.2 Gulf Power may not assign this Agreement or any portion thereof to any Person other than an Affiliate or partner of Gulf Power who is not subject to a Material Adverse Financial Condition, subject to the jurisdiction of a state regulatory commission without the prior written consent of Seller.

17.2 Other Restrictions. Seller agrees that, without the prior written consent of Gulf Power (which consent shall not be unreasonably withheld, conditioned or delayed) and the owner of the Site, there will be no (i) assignment or transfer of any interest in the Facility, (ii) Change



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of Control Transaction with respect to Seller, or (iii) delegation by Seller of the operational responsibility for the Facility.

17.3 Reimbursement of Gulf Power's Costs. Seller agrees that, in the event Seller assigns or transfers an interest in the Facility or the Agreement, or undergoes a Change of Control Transaction or executes a written consent in favor of Seller's financing party, as such transactions are described in this Article 17, Seller shall be responsible for reasonable and documented costs incurred by Gulf Power, including expenses and legal fees incurred by Gulf Power to effectuate any consent to such proposed transactions, [REDACTED]

17.4 General Requirements. Neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement (including changes in accounting treatment). It shall be reasonable for either Party to condition its consent required by this Article 17 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement or the Facility, that all security required under Article 5 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Gulf Power shall have been provided prior to such disposition.

17.5 No Partnership. Seller and Gulf Power do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

17.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and permitted assigns of Seller and Gulf Power.

17.7 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Gulf Power or Seller to any Person not a party to this Agreement.

17.8 No Gulf Power Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Gulf Power (including any Affiliate of Gulf Power acting as Gulf Power's agent where Gulf Power's agent is given certain authorities pursuant hereto) shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement, provided, however, in the event of an assignment of this Agreement to an Affiliate of Gulf Power pursuant to Section 17.1.2 such assignee will be liable for the assignor's obligations arising under this Agreement from and after the date of assignment.

17.9 Time of Essence; No Waiver. Time is of the essence of this Agreement. Neither Gulf Power's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Gulf Power or Seller of any right or



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remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

17.10 Amendments. This Agreement may be amended only by a written instrument duly executed by both Parties, each of which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

17.11 Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications shall be sent to the respective Parties at the following addresses:

Gulf Power Company

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0335  
Attention: Renewable Energy Manager

With a copy to:

Beggs & Lane  
501 Commendancia Street  
Pensacola, FL 32502  
Attention: Steven Griffin

and if given to Seller shall be addressed to:

Gulf Coast Solar Center I, LLC  
c/o HelioSage, LLC  
117 4<sup>th</sup> Street S.E. – Suite B  
Charlottesville, VA 22902  
Attention: Nelson S. Teague, Jr.

unless Gulf Power or Seller shall have designated a different officer or address for itself by written notice to the other.

17.12 Counterparts; Electronic Copies. This Agreement may be executed by facsimile or PDF (electronic copy) and in counterparts, all of which for all purposes will be deemed to be an original and all of which, taken together, constitutes one and the same instrument.

17.13 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

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17.14 Article and Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17.15 Governing Law: Forum for Disputes. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Florida. The Parties agree that the state and federal courts, as applicable, of the state of Florida shall have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction.

### 17.16 Confidentiality.

17.16.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that it shall not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Gulf Power's retail operating Affiliates, or Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by Legal Requirements.

17.16.2 The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from the FPSC, but acknowledge that certain terms, conditions and provisions of this Agreement may need to be disclosed in connection with Gulf Power's regulatory obligations before the FPSC. No assurance or commitment is made regarding the ability of Gulf Power to obtain confidential treatment from the FPSC. The Parties agree that in the event Confidential Information is required to be disclosed pursuant to Legal Requirements, the Disclosing Party shall make reasonable efforts to obtain protection from disclosure pursuant to the trade secret provisions applicable to such agency or court to ensure that the Confidential Information is protected from public disclosure.

17.16.3 Notwithstanding anything to the contrary in this Section 17.16, Gulf Power shall have the right to disclose the following information publicly or to any other Person without the consent of Seller: (i) all information received by Gulf Power from Seller or otherwise with respect to Environmental Attributes; (ii) the amount of energy purchased under this Agreement; (iii) the estimated Commercial Operation Date; (iv) a forecast of the Seller's energy deliveries under this Agreement; (v) the names of the parties to this Agreement and their Affiliates.



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17.16.4 The terms of Section 17.16 shall survive for a period of two (2) years after the termination or expiration of this Agreement. With respect to any Confidential Information that constitutes a "trade secret" under any applicable law, the Parties' obligations under Section 17.16 shall apply for the life of such trade secret.

### 17.17 Seller Advertising; Public Statements.

17.17.1 Without limiting any other provision of this Agreement, Seller shall submit to Gulf Power all advertising, sales promotion or other publicity matter relating to this Agreement wherein Gulf Power's name or the name of its Affiliate(s) is mentioned, and Seller shall not use or publish such advertising, sales, promotion or other publicity matter without written consent of Gulf Power.

17.17.2 Except as required under any Legal Requirement, any public statement by Seller concerning the transaction described herein shall be reviewed and agreed upon by Gulf Power before release to the public, which agreement shall not be unreasonably withheld, conditioned or delayed.

17.18 Photographs. Upon request, Seller shall provide Gulf Power with photographs of the Facility and the Site for use by Gulf Power for informational purposes and for promoting awareness of the energy purchased under this Agreement.

17.19 Liability. Neither Party shall be responsible for the other Party's performance, non-performance or delay in performance under this Agreement.

17.20 Gulf Power's Agent. Wherever this Agreement requires Seller to provide information, schedules, notice or the like to, or to take direction from, Gulf Power, Seller shall provide information, schedules, notice or the like to, or receive from, Gulf Power or such agent of Gulf Power as Gulf Power may direct from time to time pursuant to a written notice given to Seller in accordance with Section 17.11.

17.21 Entire Agreement. This Agreement (including the attached Appendices) constitutes the entire understanding between the Parties with respect to the purchase and sale of Solar Energy and provision of Environmental Attributes and supersedes any previous agreements between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

17.22 Severability. In the event any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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17.23 Transfer of Information Acknowledgement. Seller agrees to execute contemporaneous with the execution of this Agreement, the Transfer of Information Acknowledgement attached as Appendix G, and Gulf Power agrees to the limited use and confidential treatment of such information as set forth in Appendix G.

**[The next page is the signature page.]**



**EXECUTION VERSION**

**IN WITNESS WHEREOF**, Seller and Gulf Power have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**GULF COAST SOLAR CENTER I, LLC**

"Seller"

By: Nelson S. Teague, Jr.

Title: Manager

Name: Nelson S. Teague, Jr.

**GULF POWER COMPANY**

"Gulf Power"

By: Michael L. Burroughs

Name: Michael L. Burroughs

Title: Vice-President

**Attest:**

By: Terry A. Davis  
Terry A. Davis, Assistant Secretary

## EXECUTION VERSION

### APPENDIX A

#### SOLAR ENERGY PAYMENT CALCULATIONS

The Solar Energy payments to the Seller include Monthly Energy Payments plus an annual true-up payment or credit, determined as set forth below; provided that this Appendix A shall not apply to energy from the Facility prior to COD, which shall be governed by Section 7.2 of the Agreement.

**1. Determination of Monthly Energy Payments.**

The Monthly Energy Payment ("MEP") shall be calculated for each Month as follows:

**A. Determination of Monthly Energy Payments for Months Prior to 2017:**

For energy delivered in each Month prior to October 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * (\text{Monthly Average AER for such Month})$$

For energy delivered in each Month of October, November or December of 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * \text{CEP}$$

**B. Determination of Monthly Energy Payments for Months After 2016:**

For energy delivered in each Month occurring after 2016, MEP shall be calculated for each such Month as follows:

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $\geq 75\%$ , then:

$$\text{MEP} = \text{CEP} * \text{MDE} * \text{EPA}$$

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $< 75\%$ , then:

$$\text{MEP} = \text{MDE} * \text{Prevailing Rate}$$

Notwithstanding the foregoing: (i) if COD occurs in Calendar Year 2016, the MEP for all Months occurring in Calendar Year 2017 shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation; and (ii) if COD occurs in a Calendar Year after 2016, the MEP for all Months of such Calendar Year in which COD occurs shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation.



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### C. Certain Definitions:

The following terms have the respective meanings set forth as follows:

**ADE** = Annual Delivered Energy which, for a given Calendar Year, is the amount of Solar Energy, in MWh, delivered by Seller to Gulf Power at the Point of Delivery plus any Deemed Delivered Energy ("DDE") during such Calendar Year pursuant to this Agreement (provided that for purposes hereof, Annual Delivered Energy shall exclude any energy delivered prior to COD, and there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**ADP** = Annual Delivery Percentage for a given Calendar Year, which shall be the ratio of the sum of the Annual Delivered Energy ("ADE") for such Calendar Year and any Curtailed Energy ("CE") for such Calendar Year to the Annual Energy Contract Amount ("AECA") for such Calendar Year, i.e.:

$$\text{ADP} = (\text{ADE} + \text{CE}) / (\text{AECA})$$



**AECA** = Annual Energy Contract Amount for a given Calendar Year, as determined in Appendix F.

**AER** = the Avoided Energy Rate, which shall be, for any given hour, the amount (in \$/MWh) that is equal to the avoided cost of generation on the Gulf Power territorial system for such hour as such is calculated by or on behalf of Gulf Power pursuant to FPSC Rule 25-17.0825.

**CE** = Curtailed Energy which, for a given Calendar Year, shall equal the amounts of Solar Energy not delivered during such Calendar Year that specifically constitute "Curtailed Energy" pursuant to Section 7.7.1, Section 7.8 and Section 7.9.2 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Curtailed Energy attributable to any period prior to COD).

**CEP** = the Contract Energy Price for the Calendar Year in which the applicable Month of energy deliveries occurs, as set forth in Table A below:

**Table A**  
**Contract Energy Price\***



<b>Calendar Year</b>	<b>CEP ** (\$/MWh)</b>
2016	
2017	

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2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			




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2042***	
2043***	
Subsequent Calendar Years (if applicable)	****

\*Note – Prices for Calendar Years that do not occur in whole or in part during the period beginning with the Month when CEP is to be used to determine MEP through the end of the Term (as may be extended under Section 3.1.1) will not apply.

\*\*Note – The prices set forth in Table A are based on the presumption that Gulf Power will enter into a total of three (3) solar purchased power agreements with Seller or its Affiliates and that all three (3) agreements will receive regulatory approval from the FPSC. In the event that only two (2) solar purchased power agreements are approved by the FPSC, the prices set forth in Table A will increase by 1.5%. In the event that only one (1) solar purchased power agreement is approved by the FPSC, the prices set forth in Table A will increase by 2.5%.

\*\*\*Note – If applicable.

\*\*\*\*Note – If the Agreement is extended pursuant to section 3.1.1, CEP for each Calendar Year following 2043 shall be equal to CEP for the immediately previous Calendar Year multiplied by 

**DDE** = Deemed Delivered Energy which, for a given Calendar Year, shall be equal to the amount of Solar Energy not delivered during such Calendar Year that specifically constitutes “Deemed Delivered Energy” under Section 7.9.3 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**EPA** = The Energy Payment Adjustment shall be calculated in accordance with Table B below based on the ADP for the Calendar Year that is prior to the Calendar Year in which the Month of applicable energy deliveries occurs. Gulf Power shall apply the Energy Payment Adjustment to the Monthly Energy Payment for the duration of the current Calendar Year.

Table B

Annual Delivery Percentage for the prior Calendar Year ("ADP")	Energy Payment Adjustment ("EPA")
ADP $\geq$ 90%	
90% > ADP $\geq$ 85%	
85% > ADP $\geq$ 75%	

**MDE** = the Monthly Delivered Energy is the amount of Solar Energy, in MWh, delivered by Seller from the Facility to Gulf Power at the Point of Delivery pursuant to this Agreement during the applicable Month plus any Deemed Delivered Energy determined under Section 7.9.3 of this Agreement for the applicable Month.

**Monthly Average AER** = for a given Month, the average hourly AER over all hours of such Month (regardless of when energy deliveries commenced or occurred under this Agreement during such Month).

**Prevailing Rate** = the lower of: (i) 70% of the prevailing CEP; or (ii) the Monthly Average AER for the applicable Month of energy deliveries.

## 2. Determination of Annual True-up Payment or Credit.

At the end of each Calendar Year, a true-up payment or credit will be calculated for such Calendar Year to true-up the total Monthly Energy Payments made to the Seller for that Calendar Year to the target payment shown in Table C below for such Calendar Year ("Target Payment"); provided, however: (i) if COD occurs in Calendar Year 2016, such calculation will not be made for 2016, but will be made commencing with Calendar Year 2017 after the end of such Calendar Year 2017; (ii) if COD occurs in a Calendar Year after 2016, such calculation will be made commencing with the Calendar Year in which COD occurred after the end of such Calendar Year; and (iii) a final true-up payment or credit will be calculated at the end of the last Annual Period in order to true-up the total payments made to the Seller for the Calendar Year in which the last Annual Period expires to the Target Payment for such Calendar Year. The true-up payment or credit for a given Calendar Year shall be equal to the Target Payment for such Calendar Year minus the sum of the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year. By way of further clarification, if the Target Payment for a Calendar Year is greater than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall receive the difference (i.e., the amount of underpayment) as a true-up payment pursuant to Section 8.1.1 of the Agreement. If the Target Payment for a Calendar Year is less than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall remit to Gulf Power a credit (i.e., the amount of overpayment) for such difference pursuant to Section 8.1.1 of the Agreement.



Table C

Annual Delivery Percentage for the Calendar Year ("ADP")	Target Payment for the Calendar Year
$ADP \geq 110\%$	[REDACTED]
$110\% > ADP \geq 90\%$	[REDACTED]
$90\% > ADP \geq 85\%$	[REDACTED]
$85\% > ADP \geq 75\%$	[REDACTED]
$75\% > ADP \geq 0\%$	[REDACTED]

For purposes of this Section 2, the following terms shall have the respective meanings set forth below:

**ADP** = Annual Delivery Percentage (as defined above) for the Calendar Year (or applicable portion thereof) for which the Target Payment is being determined.

**ADE** = Annual Delivered Energy (as defined above) for the Calendar Year for which the Target Payment is being determined.

**CEP** = the Contract Energy Price (as defined above) for the Calendar Year for which the Target Payment is being determined.

**Excess ADE Payment** = the Target Payment in the event the ADP is  $\geq 110\%$  of the Annual Energy Contract Amount for the Calendar Year shall reflect the sum of:

1. [REDACTED]

2. [REDACTED]

**Excess ADE Payment** = [REDACTED]

**AAC** = the simple average of the hourly AERs over all hours of the Calendar Year.

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**APPENDIX B**

**FORM OF LETTER OF CREDIT**

\_\_\_\_\_, 20\_\_

[Name and Address  
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME OF ACCOUNT PARTY] ("[Account Party]"), with respect to the Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Account Party] and you ("Beneficiary"), as may be amended (the "PPA"), our irrevocable standby letter of credit no. \_\_\_\_\_ (the "Standby Letter of Credit") whereby we hereby irrevocably authorize you to demand payment from us, in accordance with the terms and conditions hereinafter set forth, an amount not to exceed \_\_\_\_\_ United States Dollars (U.S. \$\_\_\_\_\_).

Funds against this Standby Letter of Credit are available to you against your written demand(s) for payment delivered to us, referring thereon to the number and date of this Standby Letter of Credit, accompanied by a written and completed certificate executed by you in the form attached as Annex 1 hereto, with appropriate insertions. Multiple, partial demands may be made hereunder. Such available funds shall not directly or indirectly constitute funds or collateral deposited with or for the bank account by the [Account Party], or pledged with or for the bank's account by the [Account Party].

Delivery of such demands and such certificates shall be made on any day which is a business day for us at or prior to 5:00 p.m. (Atlanta Time) at our office located at \_\_\_\_\_, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such demand and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) business days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by telecopy or e-mail when promptly confirmed by written demand; however, actual disbursement of funds pursuant to a demand presented by telecopy or e-mail shall not occur until we are presented with the original Standby Letter of Credit.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (Atlanta time) on \_\_\_\_\_, 20\_\_. It is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date (but in no event later than \_\_\_\_\_, 20\_\_), unless we notify you, in writing, by certified or registered mail at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for such additional period.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Payment of demands made under this Standby Letter of Credit is not subject to any condition or qualification. This Standby Letter of Credit sets forth in



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full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be affected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 2 hereto, with appropriate insertions. Upon such presentation we shall forthwith issue an irrevocable letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the International Standby Practices (herein referred to as the "ISP98"). This Standby Letter of Credit shall be deemed to be a contract made under the laws of the state of Florida and shall, as to matters not governed by the ISP98, be governed by and construed in accordance with the laws of the state of Florida.

Yours very truly,

[ISSUING BANK]

**EXECUTION VERSION**

**ANNEX 1**

**CERTIFICATE**

Re: Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Name of Account Party] (“[Account Party]”) and [Name of Beneficiary] (“[Beneficiary]”) (the “PPA”).

The undersigned, each a duly authorized officer of [Beneficiary], hereby certify to [ISSUING BANK] (the “Bank”) with reference to irrevocable standby letter of credit no. (the “Standby Letter of Credit”), issued by the Bank for the account of [Account Party] in favor of [Beneficiary] that:

(1) (Insert one of the following, as applicable)

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to demand payment under the Standby Letter of Credit in the amount of the demand accompanying this certificate (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the expiration date of the Standby Letter of Credit for an additional period past its then expiration date and the Account Party has failed to deliver a substitute letter of credit in accordance with the terms of the Agreement.

(2) The undersigned are each a duly elected and incumbent officer of [Beneficiary] and are authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of this     day of     , 20     .

[BENEFICIARY]

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

Title:

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

Title:



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**ANNEX 2**

**INSTRUCTION TO ASSIGN IN ENTIRETY**

\_\_\_\_\_, 20\_\_

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

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

(Name of Assignee)

(Address)

all rights of the undersigned beneficiary to demand payment under the above Standby Letter of Credit in its entirety.

By this assignment, all rights of the undersigned beneficiary in such Standby Letter of Credit are transferred to the assignee and the assignee shall hereafter have the sole rights as beneficiary thereof.

The Standby Letter of Credit is returned herewith and in accordance therewith we ask you to issue a new irrevocable Standby Letter of Credit in favor of the assignee with provisions consistent with the Standby Letter of Credit.

Very truly yours

[Beneficiary]

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

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

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

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

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### APPENDIX C

#### FORM OF GUARANTY

THIS GUARANTY AGREEMENT (the "Guaranty"), dated and effective as of \_\_\_\_\_, 20\_\_, is made and entered into by \_\_\_\_\_ (the "Guarantor") in favor of the \_\_\_\_\_ (the "Beneficiary").

**WHEREAS** Beneficiary and \_\_\_\_\_ (the "Company"), [a subsidiary of the Guarantor], have entered into that certain Energy Purchase Agreement dated as of \_\_\_\_\_, 20\_\_, as may be amended (the "Agreement");

**WHEREAS**, the Beneficiary has required, as an inducement to enter into the Agreement, that Guarantor deliver to the Beneficiary this Guaranty or other Performance Security when required under the Agreement;

**WHEREAS**, the Guarantor qualifies as a Seller Guarantor under the Agreement and this Guaranty qualifies as Performance Security under the Agreement; and

**WHEREAS**, the Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Agreement.

**WHEREAS**, for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

#### ARTICLE 1:DEFINITIONS

1.1 Definitions. Unless otherwise defined in this Guaranty, capitalized terms have the meanings specified or referred to in the Agreement.

#### ARTICLE 2:GUARANTY

2.1 Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment and performance of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty shall in no event exceed the amount of Performance Security required to be provided by Seller from time to time pursuant to Section 5.1 of the Agreement. If Company fails to pay or perform any Guaranteed Obligation, then Guarantor will immediately pay for or perform or cause the performance of such obligation upon demand by the Beneficiary.

2.2 Guaranty Absolute. (1) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Agreement, regardless of any law or regulation now or hereafter in effect in any



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jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and performance and not of collection. The obligations of the Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

a. any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations;

b. any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries;

c. any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;

d. any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);

e. any failure of the Beneficiary to commence an action against Company;

f. any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations; or

g. except as provided in Section 2.3(c), any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.



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(2) No action which the Beneficiary shall take or fail to take in connection with the Guaranteed Obligations, or any security for the payment or performance of any of the Guaranteed Obligations, nor any course of dealing with Company or any other person, shall release Guarantor's obligations hereunder, affect this Guaranty in any way, or afford Guarantor any recourse against the Beneficiary.

(3) In the case of an Event of Default under the Agreement or with regard to any of the Guaranteed Obligations, Guarantor hereby consents and agrees that the Beneficiary shall have the right to enforce its rights, powers, and remedies thereunder or hereunder or under any other instrument now or hereafter evidencing, securing, or otherwise relating to the Guaranteed Obligations, and apply any payments or credits received by the Company or Guarantor or realized from any security, in any manner and in any order as the Beneficiary, in its sole discretion, shall see fit, and all rights, powers, and remedies available to the Beneficiary in such event shall be nonexclusive and cumulative of all other rights, powers, and remedies provided thereunder or hereunder or by law or in equity. If the Guaranteed Obligations are partially paid by reason of the election of the Beneficiary, its successors or assigns, to pursue any of the remedies available to the Beneficiary, or if such indebtedness is otherwise partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the Guaranteed Obligations even though any rights which Guarantor may have against the Company may be destroyed or diminished by the exercise of any such remedy.

### 2.3 *Waivers and Acknowledgments.*

(a) Guarantor hereby waives promptness, diligence, presentment, demand of payment, acceptance, notice of acceptance, protest, notice of dishonor and any other notices with respect to any of the Guaranteed Obligations and this Guaranty.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. The provisions of this Guaranty shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Agreement.

(1) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder; provided, however, that Guarantor shall have the same defenses available to the Company with respect to any payment obligations arising under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company.

19.4 *Subrogation.* Notwithstanding any payment or payments or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without



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limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly paid or performed in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations shall not have been indefeasibly paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

### ARTICLE 3: REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

3.1 *Organization.* The Guarantor is a [ ] duly organized, validly existing and in good standing under the laws of the state of [ ].

3.2 *Authorization; No Conflict.* The execution and delivery by the Guarantor of this Guaranty, and the performance by the Guarantor of its obligations hereunder (i) are within the Guarantor's [ ] powers, (ii) have been duly authorized by all necessary [ ] action, (iii) do not contravene its [ ] or any law or regulation applicable to or binding on the Guarantor or any of its properties and (iv) do not require the consent or approval of any person which has not already been obtained or the satisfaction or waiver of any conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

3.3 *Enforceability.* This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, dissolution, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3.4 *No Bankruptcy Proceedings.* There are no bankruptcy proceedings pending or being contemplated by Guarantor or, to its knowledge, threatened against it.

3.5 *No Legal Proceedings.* There are no legal proceedings that would be reasonably likely to materially adversely affect Guarantor's ability to perform this Guaranty.

### ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until all of the Guaranty

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Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

4.2 *Notices.* All notices, requests, demands and other communications which are required or may be given under this Guaranty shall be in writing and shall be deemed to have been duly given when actually received if (a) personally delivered; (b) transmitted by facsimile, electronic or digital transmission method; or (c) if sent by certified or registered mail, return receipt requested. In each case notice shall be sent:

- (i) if to the Beneficiary:

[Company, address, c/o person]

- (ii) if to the Guarantor:

[Company, address, c/o person]

or to such other place and with such other copies as the Beneficiary or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4.2. Delivery by facsimile of an executed counterpart of a signature page to any amendment or waiver of any provision of this Guaranty shall be effective as delivery of an original executed counterpart thereof.

4.3 *Delay and Waiver.* No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or



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occasioned by any breach by the Guarantor of any of its obligations under this Guaranty should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

4.6 *Headings.* The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

4.7 *Governing Law; Consent to Jurisdiction.* (1) This Guaranty shall be construed and interpreted, and the rights of the parties determined, in accordance with the law of the state of [Florida], without giving effect to principles of conflicts of law that would require the application of the laws of another jurisdiction.

(2) Each party hereto irrevocably and unconditionally (i) agrees that the exclusive jurisdiction for any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the United States District Court for the Northern District of Florida, or if jurisdiction is not available in the United States District Court for the Northern District of Florida, in the Circuit Court in Pensacola, Florida; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection which such party may have to the laying of venue of any such suit, action or proceeding in any such court.

(3) THE GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO, THIS GUARANTY, OR THE ACTIONS OF THE BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

4.8 *Severability.* Any provision of this Guaranty that shall be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

**EXECUTION VERSION**

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

**[Company]**

By: \_\_\_\_\_  
Name:  
Title:



## APPENDIX D

### CERTIFICATION OF WHETHER THE AGREEMENT WILL REQUIRE DECONSOLIDATION BY SELLER WITH RESPECT TO VARIABLE INTEREST ENTITY

**AGREEMENT** – Energy Purchase Agreement dated October 30, 2014 between Gulf Power Company (“Gulf Power”), and Gulf Coast Solar Center I, LLC (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that the Agreement WILL ( )/WILL NOT ( X ) require the Seller, based on U.S. Generally Accepting Accounting Procedures in effect as of the date of this certificate, to deconsolidate on its books and records any assets, liabilities, cash flow, profits or losses of Seller as a result of the Gulf Power being determined to be the primary beneficiary. My determination of the most likely accounting treatment of this transaction results from my personal consideration after necessary discussions with relevant officers of Accounting Standards Codification (“ASC”) Topic 810, Consolidation, and the following factual matters:

- 1) Seller’s accounting policies, procedures, and internal controls are sufficient to provide us with an appropriate basis for confirming the information contained herein.

  X   Yes

           No (please explain)

*Explain:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2) Seller qualifies for one of the scope exceptions listed in paragraphs 810-10-15-12 and 810-10-15-17 of ASC Topic 810. Please explain.

           Yes

  X   No

*Explain:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3) Seller is financed with equity equal to or greater than ten percent (10%) of the Seller's total assets per paragraphs 810-10-25-45 to 47 of ASC Topic 810.

☒ Yes

☐ No

- 4) The Agreement revenues correlate with fluctuations in Seller's operating cash flows (operating expenses). Please explain.

☐ Yes

☒ No

Explain: On an annual basis, both revenues and O&M expenses are expected to be predictable and relatively steady throughout the life of the power purchase agreement; however, they do not necessarily correlate. For example, in the event of unexpected system maintenance that would require temporary system downtime and would also require exceptional O&M expense, the correlation between O&M expense and revenue from Gulf Power would be inverted during such a time (higher expenses and lower revenues).

- 5) The Agreement reduces variability in the fair value of Seller's assets, for example by absorbing fuel or electricity price risk. Please explain.

☒ Yes

☐ No

Explain: The Power Purchase Agreement provides the Seller with assurance that the power produced by this asset will be sold to Gulf Power at a predictable rate for the term of the PPA. This substantially reduces the variability of the asset value during the life of the PPA due to the predictability of the pricing as outlined in the PPA.

- 6) The Agreement term is for greater than 50% of the remaining economic life of the unit.

☒ Yes

☐ No

- 7) The Agreement is for substantially all of the proposed Seller's productive output.

☒ Yes

☐ No



8) Gulf Power and/or its affiliates participated significantly in the design or redesign of the Seller's Facility.

       Yes

  X   No

9) The percentage that the Facility's fair value represents, of the fair value of the proposed Seller's total assets, is approximately;

100%

10) The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

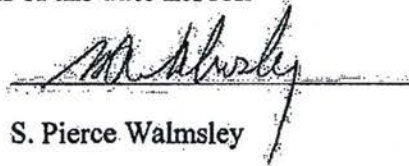
  X   Yes

       No

#### Confirmation

The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.

By:



Name: S. Pierce Walmsley

Title: CFO

Company: HelioSage, LLC

Date: October 27, 2014

APPENDIX E

FACILITY DESCRIPTION AND SITE

The land and rights-of-way and related equipment and facilities of the 30 MW Facility known as Gulf Coast Solar Center I will be located on approximately 240 acres at Eglin Air Force Base in Okaloosa County. [REDACTED]

The Facility shall include a switching station located on Seller's side of the Point of Change in Ownership ("Project Switching Station"). Seller shall design, engineer, procure, construct and install the Project Switching Station in accordance with the following:

- (1) Seller shall design, engineer, procure, construct and install the Project Switching Station using standards and specifications provided in advance by Gulf Power (including EMF requirements, standards to meet hurricane wind loading conditions, and all NESC standards);
- (2) Seller's design, engineering, procurement, construction and installation of the Project Switching Station shall comply with all requirements of law;
- (3) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of the design, engineering, procurement, construction and installation of the Project Switching Station (including prior approval of materials used for insulators, transformers, poles and other equipment), including all changes in scope;
- (4) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of all of Seller's contractors and suppliers with respect to the Project Switching Station;
- (5) Prior to commencement of construction, Seller shall provide to Gulf Power a schedule for construction of such facilities, and shall promptly respond to requests for information from Gulf Power;
- (6) At any time during construction, Gulf Power shall have the right to conduct inspections of such facilities;
- (7) At any time during construction, should any phase of the design, engineering, procurement, construction or installation of the Project Switching Station not meet the standards and specifications provided by Gulf Power, Seller shall be obligated to remedy deficiencies in the relevant portion of such facilities;
- (8) Seller shall indemnify Gulf Power for claims against Gulf Power arising from the design, engineering, procurement, construction and installation of the Project Switching Station;



## **EXECUTION VERSION**

(9) As a condition to the operation of the Project Switching Station, Gulf Power shall approve and accept for operation and maintenance such switching station;

(10) Seller shall deliver to Gulf Power "as-built" drawings, information, and any other documents that are reasonably required by Gulf Power to assure that such facilities are built to the standards and specifications required by Gulf Power.

APPENDIX F

ANNUAL ENERGY CONTRACT AMOUNT

The Annual Energy Contract Amount for each Calendar Year shall be determined as set forth in this Appendix F.

1. If COD Occurs in Calendar Year 2016.

If COD occurs in Calendar Year 2016, then the following shall apply:

- (i) There shall be no Annual Energy Contract Amount for 2016.
- (ii) The Annual Energy Contract Amount for Calendar Year 2017 shall be [REDACTED] MWh.
- (iii) For each Calendar Year after 2017, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED])$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED]) * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment})$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).



## EXECUTION VERSION

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

### 2. If COD Occurs in Calendar Year 2017 or a Subsequent Calendar Year.

If COD occurs in Calendar Year 2017 or a subsequent Calendar Year, then the following shall apply:

- (i) The Annual Energy Contract Amount for such Calendar Year in which COD occurs shall be determined as follows:

$$AECA = \text{[REDACTED]} \text{ MWh} * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment}).$$

Where:

Pro Rata Monthly  
Adjustment =

the percentage in Table F-3 below that corresponds to the Month that commences immediately after the Month in which COD occurs; provided that if COD occurs in December, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which COD occurs; multiplied by (ii) the ratio of the number of Days in such Month that occur on and after COD in such Month to the total number of Days in such Month.

- (ii) For the Calendar Year immediately following the Calendar Year in which COD occurs, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{[REDACTED]} * (1 - \text{COD Year Adjustment}).$$

## EXECUTION VERSION

Where:

COD Year Adjustment = Post COD Months \* [REDACTED]

Post COD Months = The number of Months occurring after COD but prior to the first January 1 occurring after COD (excluding the Month in which COD occurs).

For example, if COD occurs on June 15, 2017, the Annual Energy Contract Amount for 2018 shall be equal to [REDACTED] \* (1 - 6 \* [REDACTED])

- (iii) For each subsequent Calendar Year, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED])

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED] \* (Pro Rata Monthly Adjustment + Pro Rata Daily Adjustment))

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

Pro Rata Daily



**EXECUTION VERSION**

Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

**Table F-1**

Month	Percentage
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	

**Table F-2**

Month	Percentage
January	
February	
March	

**EXECUTION VERSION**

April		
May		
June		
July		
August		
September		
October		
November		
December		

**Table F-3**

<b>Month</b>	<b>Percentage</b>
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	



APPENDIX G

TRANSFER OF INFORMATION ACKNOWLEDGEMENT

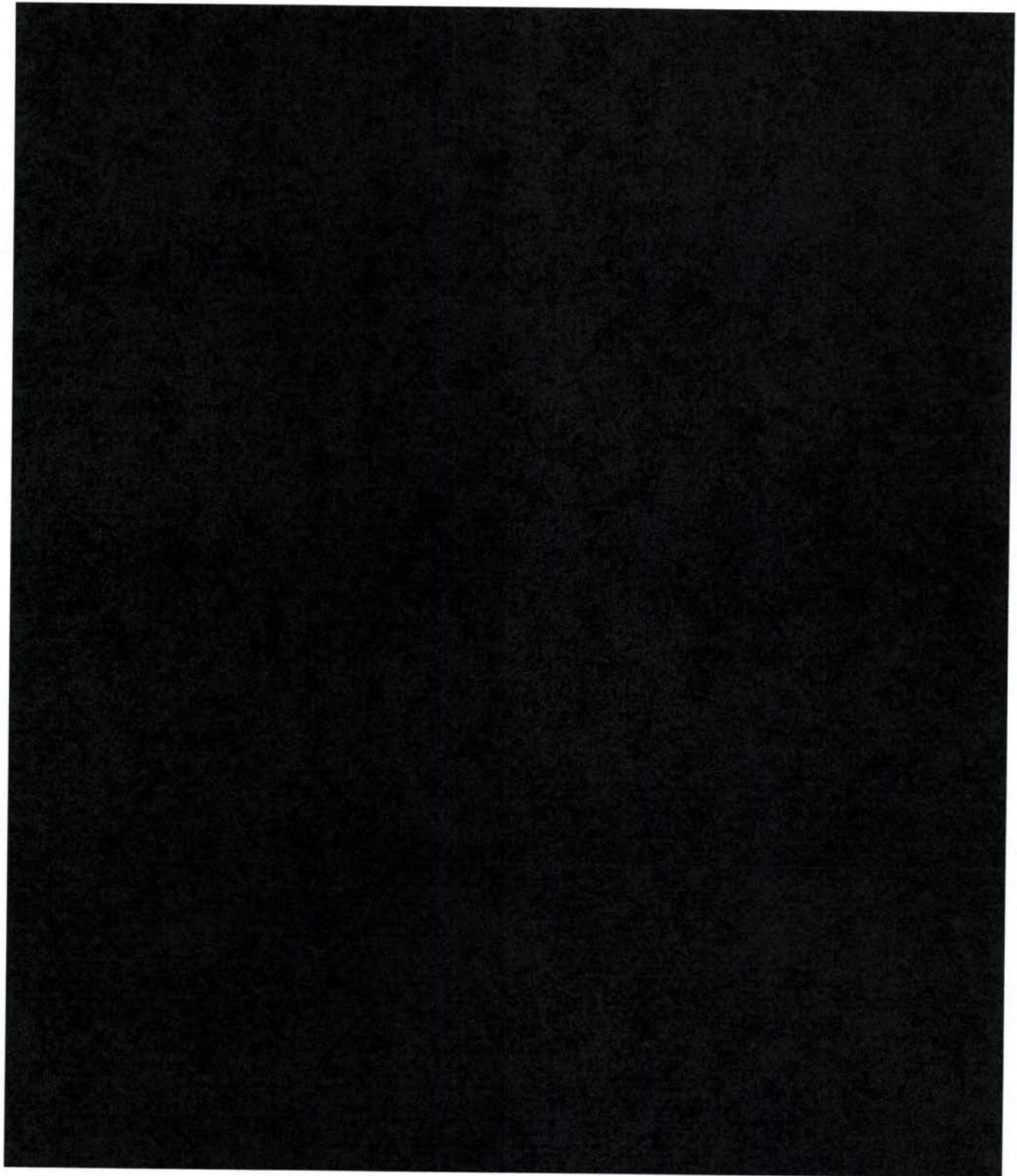
Gulf Coast Solar Center I, LLC ("Seller") and Gulf Power Company ("Gulf Power") have entered into that certain Energy Purchase Agreement between Seller and Gulf Power Company ("Agreement") dated as of OCTOBER 30, 2014. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission's Standards of Conduct will be provided by Seller to Gulf Power and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf Power Company's system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and energy affiliate/wholesale marketing unit functions under the Standards of Conduct.

The individuals within the Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Gulf Power's system operations and dispatch functions). Seller understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission's Standards of Conduct. Seller's provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of Southern Company. Seller also acknowledges that Seller is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of Seller's consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be energy affiliates/wholesale marketing units under the Standards of Conduct.

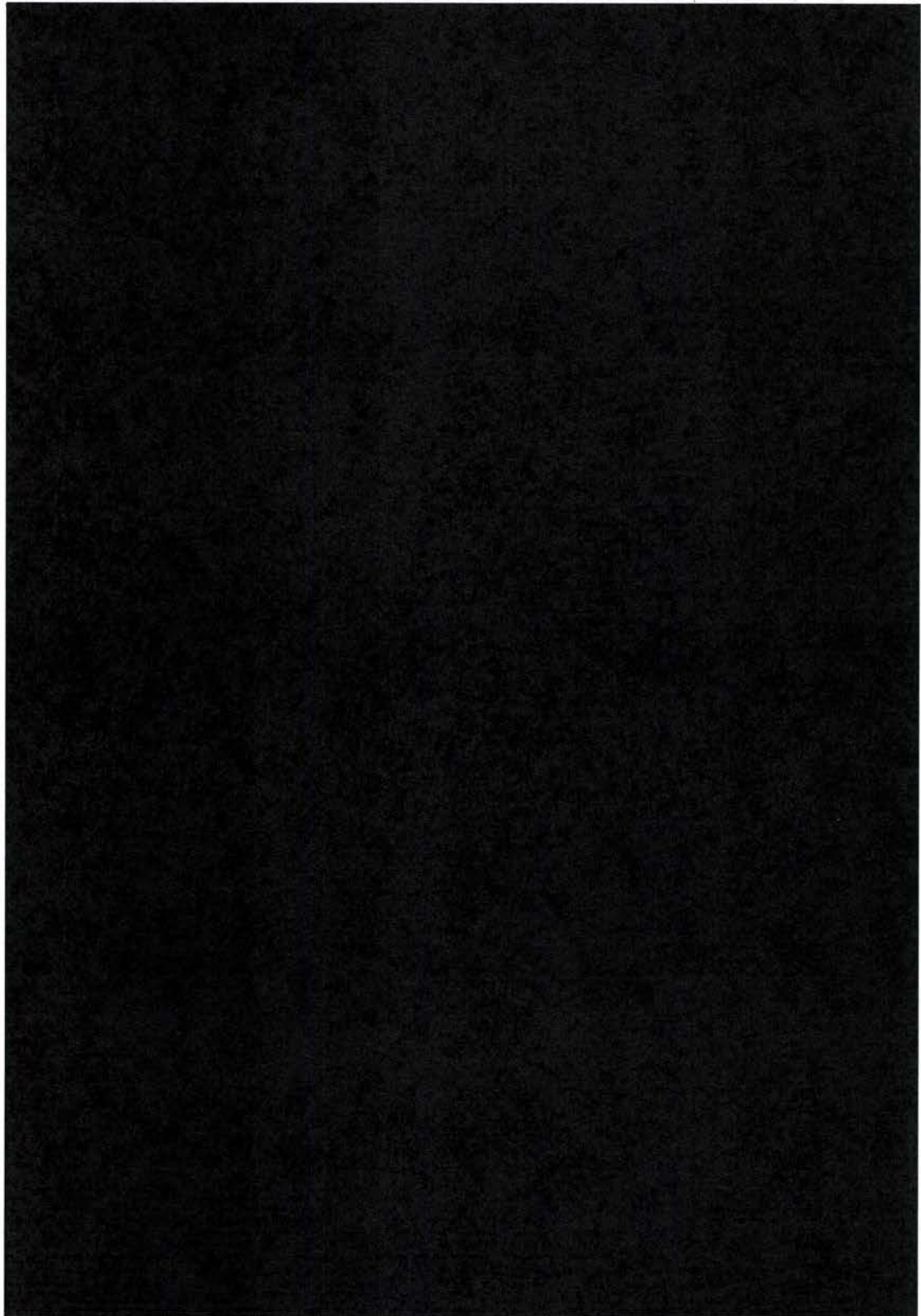
Acknowledged on behalf of Seller:

By: Nelson S. Teague Jr.  
Name: Nelson S. Teague, Jr.  
Date: 10/31/14

**APPENDIX H**  
**INTERCONNECTION REQUIREMENTS**







## EXECUTION VERSION



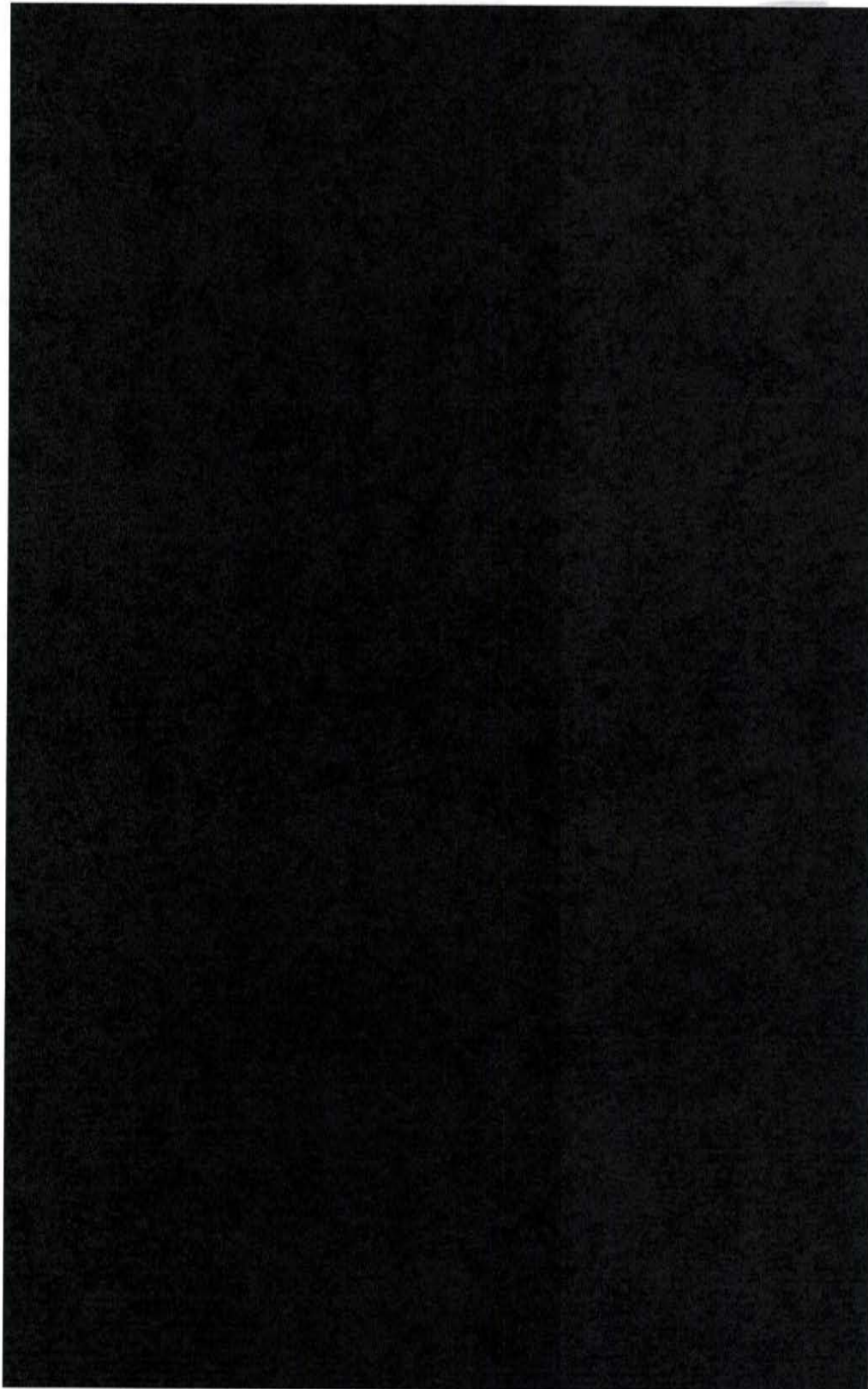
### Qualifying Facility Status

Throughout the Term of this Agreement and the term of the Interconnection Agreement, Seller shall cause the Facility to be a Qualifying Facility. Seller shall obtain, and maintain at all times during the Term of this Agreement and the term of the Interconnection Agreement, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities. For purposes hereof, "Qualifying Facility" has the meaning defined in Section 292.101(b)(1) of the regulations promulgated under PURPA, 18 C.F.R. Part 292.



**EXECUTION VERSION**

**Interconnection Diagram**



APPENDIX I

SALE AND PURCHASE OF THE FACILITY

1. Determination of Fair Market Value and Due Diligence:

In order for Gulf Power to make a determination of whether to exercise its option to purchase the Facility, from time to time, Gulf Power shall have the right to conduct due diligence with respect to the Facility and/or require the Parties to [REDACTED] (as defined in Section 6 below).

At Gulf Power's request to conduct due diligence, Seller shall provide Gulf Power and its Representatives with all such information relating to the Facility and access to the Facility as requested by Gulf Power, including: (i) all agreements that relate to the construction, procurement, ownership, operation or maintenance of the Facility; (ii) all information regarding maintenance and outages of the Facility; (iii) all information regarding claims made against Seller with respect to the Facility or the Facility; (iv) all information regarding claims made by Seller with respect to the Facility; (v) all manufacturers' and suppliers' guidelines and recommendations relating to the Facility; (vi) all operating and maintenance logs and records, insurance claims and any other records relating to the construction, procurement, operation and maintenance of the Facility; (vii) all information relating to Consents that pertain to the Facility; and (viii) all drawings, instructions, manuals, guidelines and similar items with respect to the Facility. If Gulf Power requires [REDACTED] at any time(s), [REDACTED] that would apply if Gulf Power were to thereafter exercise its option to purchase the Facility, as defined in Section 6 of this Appendix I. There shall not be a limit on the number of times that Gulf Power [REDACTED]

2. Exercise of Option:

After conducting due diligence on the Facility and after [REDACTED] if Gulf Power desires to exercise its option to purchase the Facility, Gulf Power shall provide notice to Seller of such exercise. After Gulf Power exercises the option, Gulf Power shall be entitled to continue to conduct due diligence with respect to the Facility, and Seller shall continue to provide Gulf Power with all information and access with respect to the Facility, consistent with Section 1 of this Appendix I.

3. Purchase and Sale:

If Gulf Power provides notice to Seller exercising its option to purchase the Facility, the Parties shall execute a bill of sale and assignment and any other necessary documents in accordance with this Appendix I, which shall provide for the transfer and sale of the Assets (as defined below) to Gulf Power on a date mutually agreed upon by the Parties. Such bill of sale, assignment and other



## EXECUTION VERSION

documents shall include terms, conditions, representations and warranties that are customary for similar transactions and consistent with the following provisions of this Appendix I.

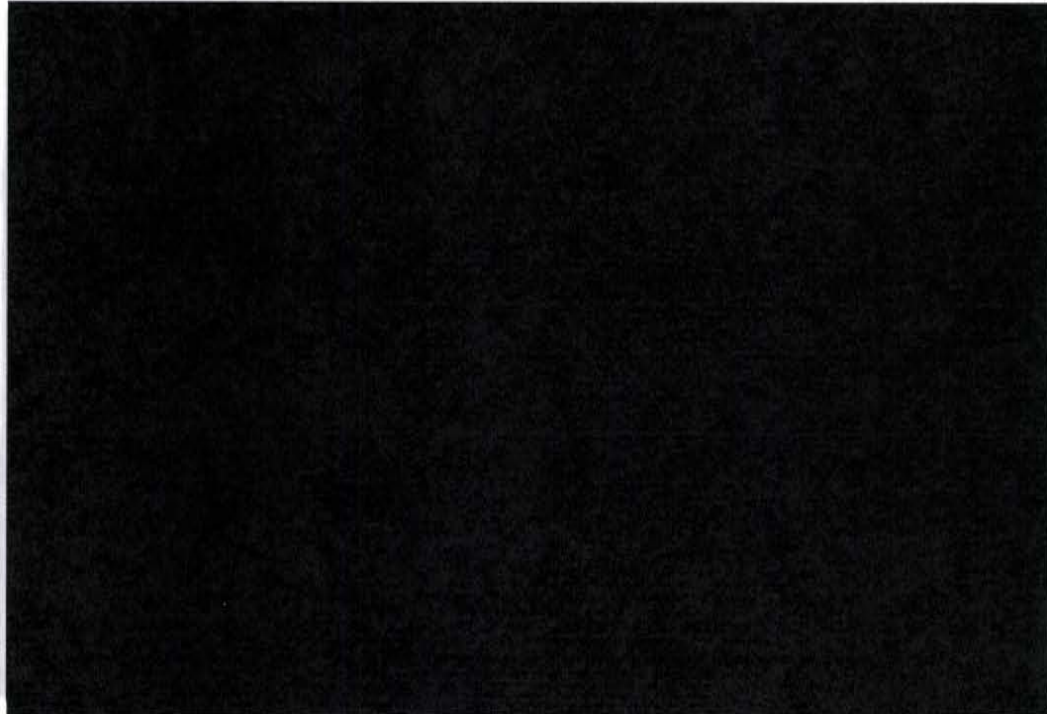
4. Structure of Transaction:

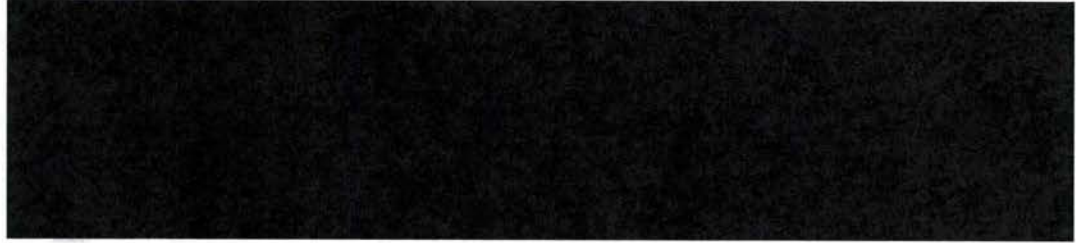
The transaction shall be structured as an acquisition of assets, not of ownership interests or shares in any entity. Gulf Power shall acquire: (i) the Facility, including all equipment, components, materials, machinery, and apparatus thereof; (ii) all other assets and property (whether real or otherwise) of Seller necessary or desirable to own, control and operate the Facility; (iii) to the extent permitted by Legal Requirements and subject to any required consents and approvals, all Consents necessary or desirable to own, control and operate the Facility; and (iv) to the extent requested by Gulf Power, all agreements to which Seller is a party relating to the assets to be acquired and which are necessary or desirable to own, control and operate the Facility (including this Agreement and the Ground Lease); provided that Seller shall ensure that all such agreements can be transferred to Gulf Power without further consents or approvals ("Assets").

5. Retention of Liabilities by Seller:

Seller shall be responsible for all liabilities and obligations relating to the Assets that arise due to any event or occurrence prior to the date of transfer of the Assets or that relate to or arise out of the ownership or operation of the Assets up to the date of transfer.

6. Purchase Price:





7. Liens and Encumbrances:

All Assets shall be transferred to Gulf Power free and clear of all liabilities, obligations, liens, claims and other encumbrances as evidenced, to Gulf Power's satisfaction, through written releases or other necessary documents.

8. Asset Warranties:

Seller shall cause all warranties and guarantees with respect to the Assets to be subrogated, assigned or otherwise made available to Gulf Power (provided that Seller shall ensure that all warranties relating to the Assets shall be assignable to Gulf Power without further consents or approvals). Seller shall also provide to Gulf Power all documentation that would be required for making a warranty claim (including purchase receipts, warranty certificates, installation documentation, etc.).

9. Closing Conditions:

The closing of the sale and transfer shall be subject to conditions that are customary for similar transactions and this Appendix I, including receipt of all requisite governmental approvals and, as requested by Gulf Power, approval by regulatory authorities to which Gulf Power is subject, the non-existence of a material adverse effect with respect to the Assets, and the non-existence of adverse changes in law or legal requirements.

10. Costs and Expenses:

Each Party shall be responsible for its own costs and expenses (including legal fees) in connection with the transfer of Assets hereunder.



## EXECUTION VERSION

### APPENDIX J

#### DETERMINATION OF SELLER AMOUNT AND BUYER AMOUNT

##### A. Determination of Seller Amount.

Except as set forth in that certain Right of First Refusal Agreement between Gulf Power, Seller, and HelioSage, LLC entered into contemporaneously with this Agreement, the Seller Amount shall be equal to the following amounts for the applicable periods, as set forth in the table below.

Applicable Period	Seller Amount
Effective Date through February 28, 2015.	[REDACTED]
March 1, 2015 until the Day on which Seller commences initial construction activities at the Site.	[REDACTED]
The Day on which Seller commences initial construction activities at the Site until the Day before the Commercial Operation Date.	[REDACTED] adjusted on January 1 of each Calendar Year after the Effective Date by CPI
On and after the Commercial Operation Date	*As determined below.

\* For all periods on and after the Commercial Operation Date, the Seller Amount shall be determined as set forth in the remaining provisions of this Section A.

By the Day that is ten (10) Days prior to the anticipated Commercial Operation Date, Gulf Power shall determine the Seller Amount that applies commencing on the Commercial Operation Date and for the remainder of the Calendar Year in which the Commercial Operation Date occurs. For each Calendar Year thereafter occurring during the Term (or partially occurring during the Term), Gulf Power shall determine the Seller Amount that shall apply for such Calendar Year (or applicable portion thereof). Gulf Power shall make such determinations pursuant to the remaining provisions of this Section A; provided that the failure to determine such amounts by such dates shall not constitute a failure to perform under the Agreement or

## EXECUTION VERSION

relieve Seller from the obligation to provide Performance Security in amounts as required by Article 5 of the Agreement.

On and after the Commercial Operation Date, the Seller Amount for a given Calendar Year (or applicable portion of a given Calendar Year that occurs on and after the Commercial Operation Date or otherwise during the Term) shall be the amount that is equal to the sum of: (i) [REDACTED] adjusted on January 1 of each Calendar Year after the Effective Date by CPI ("Site Remediation Amount"); plus (ii) the greater of: (A) the Minimum Amount for such Calendar Year, as determined in Section C of this Appendix J; or (B) the Adjusted Additional Seller Amount for such Calendar Year, as determined below.

For purposes hereof, the Adjusted Additional Seller Amount for a given Calendar Year (or applicable portion thereof) shall be determined as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**EXECUTION VERSION**

[REDACTED]

**B. Determination of Buyer Amount.**

The Buyer Amount for a given Calendar Year shall be the amount that is equal to the greater of: (i) the Minimum Amount for such Calendar Year, as determined in Section C of this Appendix J; or (ii) the Adjusted Buyer Amount for such Calendar Year, as determined pursuant this Section B below.

For purposes hereof, the Adjusted Buyer Amount for a given Calendar Year shall be determined as follows:

[REDACTED]

EXECUTION VERSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

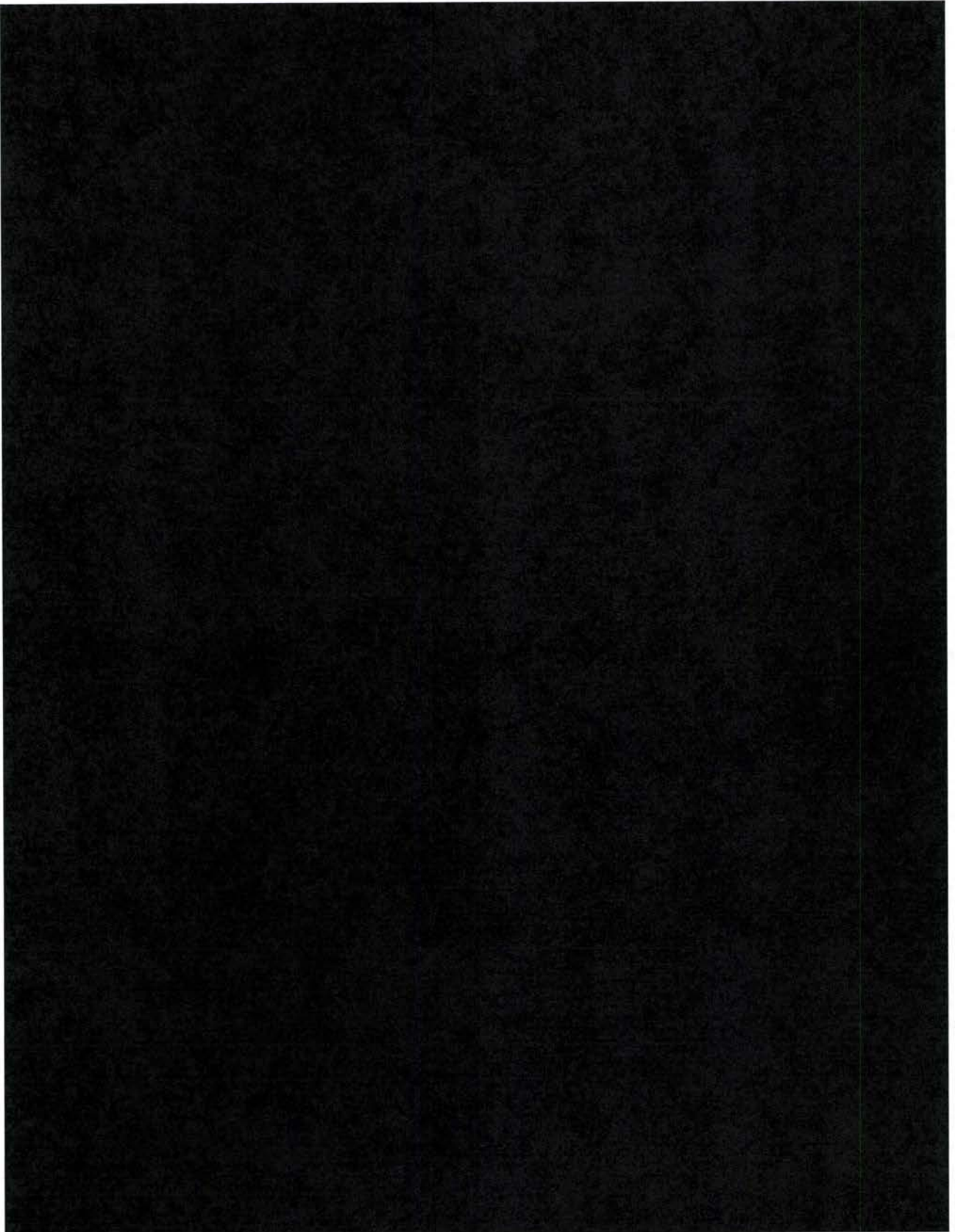
C. Certain Definitions.

The following terms shall have the respective meanings set forth below for purposes of this Appendix J:

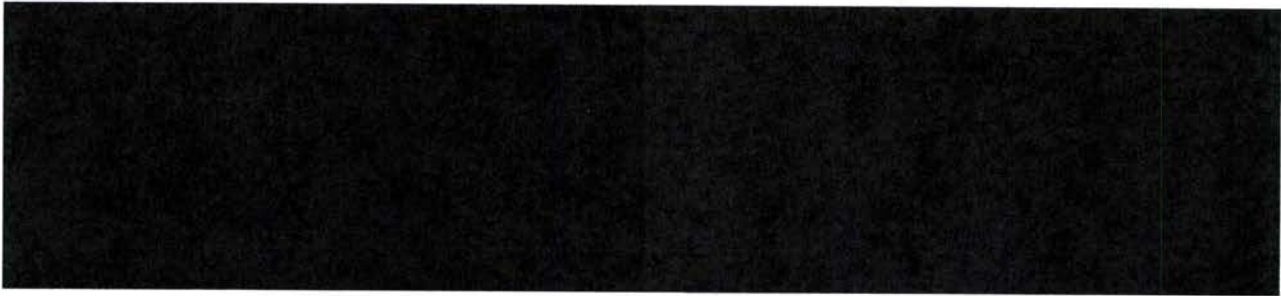
[REDACTED]

[REDACTED]





**EXECUTION VERSION**



Calendar Year	Minimum Amount (in \$/kW)
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038 and all applicable subsequent Calendar Years	





## EXECUTION VERSION

### A. Example Calculations of Seller Amount.

Example calculations of the Seller Amount are set forth in Example J-1, Example J-2, and Example J-3 below. These are only examples of the calculations described in this Appendix J and are not intended to, and shall not, modify any of the terms of this Appendix J or this Agreement. To the extent that there is a conflict between such examples and the other terms of this Appendix J or this Agreement, such other terms of this Appendix J and this Agreement shall govern. Actual amounts of the Seller Amount will vary from those set forth in the examples.

## EXECUTION VERSION

**Table J-1\***A 10x10 grid with 6 black bars and 6 black squares. The bars are located at (row, column) coordinates: (1, 1), (1, 2), (1, 3), (1, 4), (1, 5), and (1, 6). The squares are located at (2, 1), (2, 2), (2, 3), (2, 4), (2, 5), and (2, 6).

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-1 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.



## EXECUTION VERSION

**Table J-2\***

The image shows a document with a grid background, heavily redacted with black boxes. The redactions are organized into three main horizontal sections:

- Top Section:** Contains six large, irregular black redaction boxes spanning across the top of the page.
- Middle Section:** Contains six vertical black redaction bars, each spanning a significant portion of the page's height.
- Bottom Section:** Contains six small, rectangular black redaction boxes located at the bottom of the page.

The grid lines are visible throughout the page, providing a reference for the dimensions of the redacted areas.

## **EXECUTION VERSION**

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-2 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.



# **Exhibit B**

## **Energy Purchase Agreement**

### **Between**

**Gulf Power Company and**

**Gulf Coast Solar Center II, LLC**

**EXECUTION VERSION**

**ENERGY PURCHASE AGREEMENT**

**Between**

**GULF COAST SOLAR CENTER II, LLC**

**and**

**GULF POWER COMPANY**

**Dated as of November 7, 2014**



## EXECUTION VERSION

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## EXECUTION VERSION

### ENERGY PURCHASE AGREEMENT

This Energy Purchase Agreement ("Agreement") is entered into this 7th day of November, 2014 ("Effective Date"), by and between **GULF COAST SOLAR CENTER II, LLC**, a Florida limited liability company ("Seller"), and **GULF POWER COMPANY**, a corporation organized and existing under the laws of the state of Florida ("Gulf Power"). Seller and Gulf Power may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

#### WITNESSETH:

**WHEREAS**, Seller is planning to construct, own, and operate a solar electric generation facility on land for which Gulf Power may acquire the right to construct, own and operate such a facility;

**WHEREAS**, Seller desires to sell, and Gulf Power desires to purchase, the energy to be generated by said generation facility, subject to the terms and conditions of this Agreement;

**WHEREAS**, in connection with such sale and purchase of the energy, the Parties also desire for Seller to provide to Gulf Power all Environmental Attributes and Electrical Products (as such terms are defined herein) associated with said energy; and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which the sale of electric energy, and the provision of Electrical Products and Environmental Attributes, shall be conducted between the Parties.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Gulf Power and Seller, each intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used herein and not otherwise defined, shall have the respective meanings set forth below.

"AAC" has the meaning set forth in Appendix A.

"Adjustment Period" has the meaning set forth in Section 6.2.3.

"Affiliate(s)" means for any specific entity, any other entity directly or indirectly controlling or controlled by or under common control with such specified entity. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of an entity has "control" of such entity; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

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**"Aggrieved Party"** has the meaning set forth in Section 16.1.

**"AIER"** means the Associated Interchange Energy Rate as defined in the IIC, including any successor term.

**"Annual Delivered Energy" or "ADE"** has the meaning set forth in Appendix A.

**"Annual Delivery Percentage" or "ADP"** has the meaning set forth in Appendix A.

**"Annual Energy Contract Amount" or "AECA"** has the meaning set forth in Section 7.1 and Appendix F.

**"Annual Period(s)"** means any one of a succession of consecutive three hundred sixty five (365) Day periods (or a three hundred sixty six (366) Day period in the case of a leap year), the first of which shall begin on the Commercial Operation Date.

**"ASC"** means the FASB Accounting Standards Codification.

**"Avoided Energy Rate" or "AER"** has the meaning set forth in Appendix A.

**"Below Investment Grade Rating"** means, with respect to any Person, that: (i) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa3 (or future equivalent) by Moody's; or (ii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB- (or future equivalent) by S&P; or (iii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB- (or future equivalent) by Fitch; or (iv) neither such Person nor its senior unsecured long-term debt not supported by third party credit enhancements, as applicable, is rated by at least two of Moody's, S&P and Fitch.

**"Billing Dispute Notice"** has the meaning set forth in Section 9.2.2.

**"Business Day(s)"** means any Day excluding Saturday and Sunday and excluding any Day on which banking institutions in Pensacola, Florida are closed because of a federal holiday.

**"Buyer Amount"** means the amount determined by Gulf Power to be the "Buyer Amount" for the applicable period of time under Appendix J, as may be modified from time to time.

**"Calendar Year"** means a calendar year comprised of the Months of January through December.

**"Cash Security"** means cash security, free and clear of any adverse lien or interest, provided pursuant to a pledge agreement and a control agreement, each in form and substance acceptable to Gulf Power.

**"Change of Control Transaction"** in respect of a Person means any transaction or series of related transactions which, if consummated, would result in such Person being an Affiliate of



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another ultimate parent entity immediately after such transaction. For purposes of this definition, a Person's ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person's outstanding capital stock or other equity interests having ordinary voting power and which does not itself have an ultimate parent entity.

**"Change of Law"** means any change to a Legal Requirement, including changes to laws or regulations regulating or imposing a tax, fee or other charge on discharges, emissions, effluents or disposals from the Facility.

**"Commercial Operation"** has the meaning set forth in Section 2.5.

**"Commercial Operation Date" or "COD"** means the date on which the Facility achieves Commercial Operation.

**"Confidential Information"** means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development, or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the "Disclosing Party," the other Party being the "Receiving Party"). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party's possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party's knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; or (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information.

**"Consent(s)"** means any approval, consent, authorization or other applicable requirement with respect to the Facility from any Governmental Authority, including all applicable environmental certificates, licenses, permits and approvals.

**"Contract Energy Price" or "CEP"** has the meaning set forth in Appendix A.

**"Curtailed Energy" or "CE"** has the meaning set forth in Appendix A.

**"Day"** means a calendar day.

**"Daylight Period"** means the period of time during each Day that commences at sixty (60) minutes prior to the time of sunrise on such Day, and ends sixty (60) minutes after the time of sunset on such Day with the time of "sunrise" and "sunset" determined for Pensacola, Florida for such Day by the National Weather Service.

**"Deemed Delivered Energy" or "DDE"** has the meaning set forth in Section 7.9.3 and Appendix A.

**"Defaulting Party"** has the meaning set forth in Section 11.3.



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**"Demand"** has the meaning set forth in Section 16.2.2.1.

**"Dispute Review Notice"** has the meaning set forth in Section 9.2.3.

**"Effective Date"** means the date of execution of this Agreement.

**"Electrical Products"** means all electrical products produced by or related to the Facility, including spinning reserves, operating reserves, balancing energy, regulation service, reactive power and voltage control, frequency control and other ancillary service products, or any similar benefit Gulf Power otherwise would have realized from or related to the Facility if Gulf Power rather than Seller had constructed, owned or operated the Facility, it being the Parties' intent that all such benefits and entitlements in addition to electrical output that flow to the owner or operator of the Facility belong to Gulf Power at no additional cost to Gulf Power. Electrical Products shall not include any tax benefits, including local, state or federal tax benefits that arise from the construction, ownership or operation of the Facility.

**"Electric System"** means collectively, the entire network of electric generating, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by Gulf Power or its Affiliates for the purposes of generating, transmitting and receiving electric energy.

**"Emergency"** means a condition or situation on the Electric System, including voltage abnormalities, that, in the reasonable judgment of Gulf Power, adversely affects or is reasonably likely to adversely affect: (i) public health, life or property; (ii) Gulf Power's employees, agents or property; (iii) Gulf Power's or any of its Affiliates' ability to safely and reliably operate the Electric System; (iv) the integrity of the Electric System or any electric system connected thereto; or (v) Gulf Power's ability to maintain safe, adequate and continuous service to its customers and the customers of any member of NERC.

**"Energy Payment Adjustment" or "EPA"** has the meaning set forth in Appendix A.

**"Environmental Attributes"** means any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits), howsoever entitled and whether known or unknown, whether existing as of the Effective Date or in the future, and whether or not such Environmental Attributes have been certified or verified under any renewable standards or otherwise that arise or result from the generation of Solar Energy. Environmental Attributes include any such Environmental Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel.



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Environmental Attributes include the exclusive right to report such Environmental Attributes to any Governmental Authority or other Person. Environmental Attributes do not include: (a) any state or federal production tax credits associated with the Facility; (b) any investment tax credits and any other tax credits associated with the Facility; (c) Grants in Lieu of investment tax credits or any similar financial payment or grant with respect to the Facility or the metered electric energy output thereof; or (d) the metered electric energy produced by the Facility.

**"Extended Force Majeure Event"** has the meaning set forth in Section 15.5.1.

**"Event(s) of Default"** has the meanings set forth in Section 11.1 for Seller and Section 11.2 for Gulf Power.

**"Excess ADE Payment"** has the meaning set forth in Appendix A.

**"Facility"** means all panels and related equipment and facilities of the solar photovoltaic electric generating plant described in Appendix E to be or being constructed by Seller on the Site with a nameplate electric generating capability equal to the Planned Capacity Amount. The Facility shall include the panels and all auxiliary equipment and facilities installed at the Site necessary or used for the extraction or collection of fuel, or the production, control, delivery or monitoring of Solar Energy by the panels. All equipment and facilities installed on Seller's side of the Point of Change in Ownership shall be considered a part of the Facility.

**"Fair Market Value"** has the meaning set forth in Section 6 of Appendix I.

**"FASB"** means the Financial Accounting Standards Board.

**"FERC"** means the Federal Energy Regulatory Commission, or any Governmental Authority succeeding to the powers and functions thereof.

**"Fitch"** means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"Force Majeure Event"** has the meaning set forth in Section 15.1.

**"Force Majeure Remedy Plan"** means the plan submitted to a Party pursuant to Section 15.5 in the event of an Extended Force Majeure Event.

**"FPSC"** means the Florida Public Service Commission.

**"FPSC Approval Target Date"** has the meaning set forth in Section 3.4.3.

**"FPSC Denial"** has the meaning set forth in Section 3.4.3.

**"FPSC"** means the Florida Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.

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**"GAAP"** means generally accepted accounting principles in the United States, as modified from time to time.

**"Governmental Authority" or "Governmental Authorities"** means any federal, state or local governmental or regulatory authority, administrative agency, commission, department, board or court that has jurisdiction over either of the Parties to this Agreement or the subject matter of this Agreement, when referenced in this Agreement.

**"Green-e Energy"** means the Green-e certification and verification program for renewable energy, greenhouse gas emission reductions and other Environmental Attributes that is administered by the Center for Resource Solutions, and any successor(s) thereto.

**"Green-e National Standard"** means the Green-e National Standard as determined, published, codified and otherwise promulgated by Green-e and that defines eligibility criteria for Green-e certified renewable energy products, including renewable energy certificates, utility green pricing programs, and competitive market electricity products, as such standard(s) may be modified from time to time.

**"Ground Lease"** means that certain Ground Lease to be executed and delivered by the Parties that provides Seller the right to develop, construct, own and operate the Facility on the Site.

**"Gulf Power"** means Gulf Power Company and its permitted successors and assigns.

**"IIC"** means the "Southern Company System Intercompany Interchange Contract" as filed pursuant to 119 FERC ¶ 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138, as may be amended from time to time, or any successor contract thereto among Gulf Power and certain of its Affiliates.

**"Indemnified Party"** has the meaning set forth in Section 13.1.

**"Indemnifying Party"** has the meaning set forth in Section 13.1.

**"Interconnection Agreement"** means that certain Interconnection Agreement by and between Seller and the Transmission Provider containing terms and conditions governing the interconnection and parallel operation of the Facility with the Electric System.

**"Interconnection Cost Threshold"** means [REDACTED]

**"Interest Rate"** means the interest per annum equal to the prime rate as published in The Wall Street Journal or comparable successor publication under "Money Rates," as applied on a daily basis and compounded quarterly.

**"Interconnection Requirements"** means the requirements set forth in Appendix H.

**"Investment Tax Credit Deadline"** means the expiration date of the federal investment tax credit for eligible solar energy property available under 26 USC §48, which, as of the Effective Date is December 31, 2016, as such date may be extended by subsequent legislation.



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**"kW"** means kilowatt alternating current.

**"Legal Requirement(s)"** means any law, code, statute, regulation, rule, ordinance, permit, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

**"Letter of Credit"** means a letter of credit in the form of Appendix B hereto, or otherwise acceptable to Gulf Power, in an available undrawn amount of not less than the Required Seller Post Amount, which is in full force and effect and is not within ninety (90) Days of terminating or expiring, issued by a major U.S. commercial bank or a U.S. branch office of a major foreign bank who has and maintains assets of at least \$25 billion and at all times having a senior unsecured rating of at least "A2" (or future equivalent) by Moody's and at least "A" (or future equivalent) by S&P.

**"Material Adverse Change"** means, with respect to a Person, any event, occurrence or circumstance whereby the maturity of any indebtedness of such Person which in the aggregate exceeds an amount equal to \$50,000,000.00 or three percent (3%) of the equity in such Person that is owned by the shareholders of such Person, whichever is less, is accelerated by the holder or holders thereof as a result of a default thereunder.

**"Material Adverse Financial Condition"** means, with respect to a Person, any circumstance, event or condition whereby: (i) such Person has or commences to have a Below Investment Grade Rating; or (ii) there exists or commences to exist a Material Adverse Change with respect to such Person.

**"Metering System"** means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is being made available or delivered to Gulf Power at the Point of Delivery.

**"Minimum Energy Contract Amount"** means, for a given Calendar Year, [REDACTED] of the Annual Energy Contract Amount for such Calendar Year.

**"Minimum Investment Grade Condition"** means, with respect to any Person, any circumstance, event or condition whereby: (i) a Material Adverse Financial Condition does not exist with respect to such Person; and (ii) (a) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of Baa3 (or future equivalent) by Moody's; (b) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating of BBB- (or future equivalent) by S&P; or (c) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of BBB- (or future equivalent) by Fitch.

**"Month(s)"** means a calendar month, commencing at the beginning of the first Day of such calendar month.

**"Monthly"** has a meaning correlative to that of Month.

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**"Monthly Delivered Energy" or "MDE"** has the meaning set forth in Appendix A.

**"Monthly Energy Payment(s)"** means the Monthly amount to be paid by Gulf Power to Seller for Gulf Power's purchase of Solar Energy from the Facility as calculated in accordance with Appendix A.

**"Moody's"** means Moody's Investors Service, Inc. or its successor. If Moody's ceases to exist or publish ratings, Moody's shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"MW"** means megawatt alternating current.

**"MWh"** means megawatt-hour alternating current.

**"National Weather Service"** means the National Weather Service, a component of NOAA, or successor thereto.

**"NERC"** means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

**"Network Resource"** has the meaning set forth in the Southern OATT, including any successor term.

**"Net Worth"** means, with respect to any Person, the dollar value calculated by subtracting total liabilities from total assets (excluding goodwill and other intangible assets described in ASC 350 (formerly FASB Statement 142)) of such Person as such terms are determined in accordance with GAAP, as such may be modified from time to time.

**"Non-Defaulting Party"** has the meaning set forth in Section 11.3.

**"NOAA"** means the National Oceanic and Atmospheric Administration, or successor thereto.

**"Noticed Party"** has the meaning set forth in Section 16.1.

**"Operating Committee"** means the committee established pursuant to Section 4.7.

**"Operating Procedures"** means those procedures developed by the Parties pursuant to Section 4.1.1.

**"Operating Representatives"** means those individuals appointed by each of the Parties to form and maintain the Operating Procedures.

**"Party" or "Parties"** means either Gulf Power or Seller or both.

**"Party-Appointed Arbitrator(s)"** has the meaning set forth in Section 16.2.2.2.



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**"Performance Security"** means Cash Security, a Letter of Credit or a Seller Guaranty; provided, however, at least fifty percent (50%) of any Performance Security required to be provided by Seller under this Agreement must be in the form of either a Letter of Credit or Cash Security whenever Seller is providing a Seller Guaranty and: (i) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa2 (or future equivalent) by Moody's; (ii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB (or future equivalent) by S&P; or (iii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB (or future equivalent) by Fitch.

**"Person"** means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Planned Capacity Amount"** means forty (40) MW (AC or alternating current).

**"Point of Change in Ownership"** has the meaning set forth in Appendix H.

**"Point of Delivery"** means the point where Seller shall deliver Solar Energy from the Facility to Gulf Power pursuant to this Agreement, which point shall be the Point of Interconnection.

**"Point of Interconnection"** means the point at which the Facility is interconnected to the Electric System, as defined in the Interconnection Agreement with the Transmission Provider and as illustrated in the diagram set forth in Appendix H.

**"Prevailing Rate"** has the meaning set forth in Appendix A.

**"Primary Beneficiary"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Prudent Industry Practices"** means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric industry in the United States (as the same pertain to solar electric generation facilities) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the United States having due regard for, among other things, manufacturers' warranties and applicable Legal Requirements.

**"PURPA"** means the Public Utility Regulatory Policies Act of 1978, as such act may be amended from time to time.



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**“Renewable Energy Credits”** means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy generated at the Facility that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective.

**“Required Commercial Operation Date”** or **“RCOD”** means 11:59 pm Central Prevailing Time on February 28, 2017, or such later date as may be extended pursuant to the provisions of Section 2.6.4 or Section 6.1.4.

**“Required Seller Post Amount”** means: (i) for any time period during which there exists a Minimum Investment Grade Condition with respect to Seller, an amount that is equal to fifty percent (50%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J; and (ii) for any time period during which there exists a Material Adverse Financial Condition with respect to Seller, an amount that is equal to one hundred percent (100%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J.

**“Rules”** has the meaning set forth in Section 16.2.2.1.

**“S&P”** means Standard & Poor’s Financial Services LLC, or its successor. If S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**“Scheduled Outage(s)”** has the meaning set forth in Section 4.4.

**“Security Posting Condition”** means an occurrence, non-occurrence, circumstance or event whereby there exists or commences to exist, with respect to Seller, a Material Adverse Financial Condition or a Minimum Investment Grade Condition.

**“Seller”** means Gulf Coast Solar Center II, LLC and its permitted successors and assigns.

**“Seller Amount”** means the amount determined by Gulf Power to be the “Seller Amount” for the applicable period of time under Appendix J, as may be modified from time to time.

**“Seller Guarantor”** means an entity that guarantees Seller’s obligations under this Agreement, including through a Seller Guaranty.

**“Seller Guaranty”** means a continuing guaranty in the form of Appendix C hereto, or otherwise acceptable to Gulf Power, which is properly completed and executed and in full force and effect and with respect to which the Seller Guarantor has not given any notice of termination, cancellation or revocation, issued by a Person: (i) who is a direct or indirect parent of Seller, unless otherwise agreed by the other Party in its sole discretion; (ii) with respect to whom there does not exist a Material Adverse Financial Condition at any time such guaranty is intended to constitute Performance Security; and (iii) has a Net Worth of at least five hundred



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million dollars (\$500,000,000) for the entire period during which such guaranty is intended to constitute Performance Security.

**"Seller Installed Facilities"** has the meaning set forth in Appendix H.

**"Seller Radial Facilities"** has the meaning set forth in Appendix H.

**"Site"** means the site on which the Facility shall be constructed, operated and maintained, as set forth in Appendix E.

**"Site Remediation Amount"** has the meaning set forth in Section A of Appendix J.

**"Solar Energy"** means the electricity, including all the associated Electrical Products, produced by the Facility by converting sunlight into energy using photovoltaic cells, excluding electric energy produced in connection with testing, start-up or commissioning of the Facility.

**"Southern Companies"** means, collectively, the electric utility operating companies of The Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company).

**"Southern OATT"** means the Open Access Transmission Tariff of the Southern Companies that own or operate transmission systems (which, as of the Effective Date, include Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company), as filed and maintained in accordance with the requirement of FERC, as well as any successor tariff or agreement.

**"Station Service"** means energy that is used to serve the electrical requirements of the Facility, and includes the step-up transformer losses and line losses between the Facility and the Point of Delivery.

**"Target Payment"** has the meaning set forth in Appendix A.

**"Term"** has the meaning set forth in Section 3.1.

**"Third Arbitrator"** has the meaning set forth in Section 16.2.2.2.

**"Transmission Provider Installed Facilities"** has the meaning set forth in Appendix H.

**"Transmission Provider"** means the owner or operator of the transmission system responsible for providing transmission interconnection service to the Electric System.

**"Transmission Curtailment Event"** means a condition or situation whereby the Transmission Service is curtailed, interrupted, or unavailable consistent with Section 33 of the Southern OATT or the transmission loading relief procedures of NERC referenced in Attachment P to the Southern OATT (including any successor provisions or procedures thereto). For purposes of this definition, a Transmission Curtailment Event shall include any such curtailment, interruption or unavailability of Transmission Service that affects the ability of Gulf

## EXECUTION VERSION

Power to receive energy at the Point of Delivery or that affects the ability of Gulf Power to deliver energy from the Point of Delivery to Gulf Power's load.

**"Transmission Service"** means the network transmission service that Gulf Power requests and obtains, by designating the Facility as a Network Resource under Section 7.6.1, in order to deliver energy from the Point of Delivery to its customers.

**"Variable Interest"** or **"VI"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Variable Interest Entity"** or **"VIE"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

### 1.2 Interpretation.

1.2.1 This Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

1.2.2 In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

1.2.3 Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

1.2.4 Any reference in this Agreement to "Section," "Article," "Appendix," or "Schedule" shall be references to this Agreement unless otherwise stated, and all such Schedules and Appendices shall be incorporated in this Agreement by reference.

1.2.5 In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties, which successor or alternate index or publication shall reflect information that is the same (or as similar as possible) as the information that was previously published in the prior applicable index or publication.

1.2.6 Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time.



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1.2.7 Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

1.2.8 Whenever the term "consent" or "approval" is used herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed by the consenting or approving Party, unless the Agreement provides such consent or approval is in the sole and absolute discretion of the consenting Party.

### ARTICLE 2: FACILITY DESIGN AND CONSTRUCTION

2.1 Facility. The Facility consists of the solar powered electric generation facilities with a total nameplate electric generating capability equal to the Planned Capacity Amount, as further described in Appendix E.

2.2 Consents. Seller hereby agrees to seek to obtain, at its sole expense, any and all Consents that Seller is required to obtain for the development, construction, operation, maintenance, testing and any necessary modification of the Facility. Gulf Power will support and cooperate with, and not oppose, obstruct or otherwise interfere in any means with the efforts of Seller or its Affiliates to obtain all Consents that are the responsibility of Seller hereunder.

2.3 Inspections. Upon reasonable prior advance notice to Seller, representatives of Gulf Power shall be entitled to inspect the construction, maintenance, operation and testing of the Facility. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Gulf Power provided that: (i) such inspections shall not materially interfere with the testing or operations of the Facility, and (ii) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety. Gulf Power's review and inspection of the Facility shall not be construed as endorsing the design or construction thereof or as any warranty of the safety, durability or reliability of the Facility.

2.4 [Reserved].

2.5 Design and Construction of the Facility. Seller shall cause the Facility to be designed, engineered, constructed, installed, tested and commissioned in accordance with: (i) Prudent Industry Practices and all applicable Legal Requirements; and (ii) the specifications and requirements set forth under the Facility description in Appendix E. Seller shall use diligent efforts to achieve Commercial Operation of the Facility on or before the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date") and to otherwise carry out its obligations under this Agreement. The Facility shall be deemed to have achieved "Commercial Operation" upon fulfillment of all of the following criteria: (i) Seller shall demonstrate the completion of the construction and installation of solar photovoltaic modules and inverters and all other equipment and facilities comprising the Facility, representing a total completed and installed nameplate electric generating capacity equal to the



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Planned Capacity Amount; (ii) Seller shall demonstrate that the Facility is capable of producing Solar Energy and delivering such Solar Energy to the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iii) Gulf Power is able to receive such Solar Energy at the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iv) Seller shall have provided Gulf Power a certificate reasonably acceptable to Gulf Power, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and the terms of this Agreement; and (v) Seller shall have delivered to Gulf Power a certificate from a responsible officer of Seller certifying that Seller is in compliance with the Interconnection Agreement and Seller has obtained all applicable Consents required under Legal Requirements to be obtained by Seller at the time of Commercial Operation of the Facility for the construction, ownership, operation and maintenance of the Facility in accordance with this Agreement.

### 2.6 Failure to Achieve Required Commercial Operation Date.

2.6.1 In the event that the Facility does not achieve Commercial Operation by the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"), Seller shall pay Gulf Power an amount of liquidated damages equal to [REDACTED] for each Day after the Required Commercial Operation Date that the Facility does not achieve Commercial Operation ("Daily LDs"). Such liquidated damages shall be paid to Gulf Power within three (3) Business Days after Seller receives an invoice from Gulf Power for the same. Seller shall pay such liquidated damages to Gulf Power for each Day until the earlier of: (i) the Commercial Operation Date; (ii) the Day that Seller notifies Gulf Power that Commercial Operation will not be achieved; or (iii) the Day that Gulf Power terminates this Agreement pursuant to Section 2.6.2.

2.6.2 If the Facility does not achieve Commercial Operation within two hundred seventy (270) Days after the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"), then Gulf Power shall be entitled to terminate this Agreement at any time thereafter by providing notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved.

2.6.3 If Seller notifies Gulf Power under Section 2.6.1(ii) that Commercial Operation will not be achieved, or if Gulf Power provides notice to Seller terminating this Agreement under Section 2.6.2, this Agreement shall immediately terminate and the following shall apply (in addition to other applicable provisions of this Agreement):

(i) Seller shall, within three (3) Business Days, pay to Gulf Power liquidated damages in an amount equal to: (i) if commencement of initial construction activities at the Site have not begun, [REDACTED] (in addition to any Daily LDs that are required to be paid); or (ii) if commencement of initial construction activities at the Site have begun, [REDACTED]



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██████████ (in addition to any Daily LDs that are required to be paid); and

(ii) Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.4 Seller shall be entitled to extend the Required Commercial Operation Date on a Day-for-Day basis up to the period of any delay in achieving Commercial Operation that is caused by a Force Majeure Event. In the event that Seller extends the Required Commercial Operation Date under this Section 2.6.4 by more than three hundred sixty five (365) Days, Gulf Power shall be entitled to terminate this Agreement at any time thereafter upon written notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved. If Gulf Power provides notice to Seller terminating this Agreement under this Section 2.6.4, this Agreement shall immediately terminate. Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.5 Gulf Power may draw upon the Performance Security to recover any amounts required to be paid by Seller under this Section 2.6, and Seller will be required to periodically replenish such Performance Security in accordance with Article 5.

2.6.6 In no event shall Seller have the right to receive a Monthly Energy Payment for any energy delivered prior to the Commercial Operation Date. Notwithstanding the foregoing, Seller may sell Solar Energy during testing of the Facility pursuant to Section 7.2.

## ARTICLE 3: TERM; PURCHASE OPTION; CONDITIONS; REGULATORY

### 3.1 Term.

3.1.1 Subject to the early termination provisions set forth herein, this Agreement shall become effective on the Effective Date and shall remain in full force and effect until the end of the twenty fifth (25th) Annual Period ("Term"); provided, however, that if the Parties mutually agree in writing (as determined by each Party in its sole and absolute discretion), the Term shall be extended for up to two additional periods of five (5) Annual Periods each (for up to a total of ten (10) additional Annual Periods); provided further, that if the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to this Section 3.1.1, for the period of the extension, the Contract Energy Price shall adjust as set forth in Appendix A, and the values set forth in Table J-1, Table J-2

## EXECUTION VERSION

and the table for "Minimum Amount" in Appendix J shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.

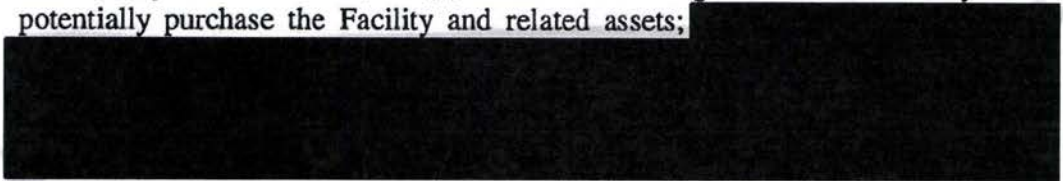
3.1.2 In the event that the Ground Lease terminates for any reason, then this Agreement shall also terminate at the time of termination of the Ground Lease (subject to any other rights that Gulf Power or Seller may have under this Agreement and the Ground Lease, including under Article 11 of this Agreement).

3.1.3 Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations that shall survive termination or expiration: (i) the obligation to pay each other all amounts accrued or then owed and not paid under this Agreement; and (ii) all obligations that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement, including such obligations that must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.2 Purchase Option During the Term. Throughout the Term, Gulf Power shall have the option to purchase the Facility and certain other property in accordance with Appendix I; provided, however, unless this Agreement terminates and Section 3.3 applies, in no event shall any such purchase be consummated prior to the end of the fifth (5th) Annual Period. In order for Gulf Power to make a determination of whether to exercise such option to purchase the Facility, Gulf Power shall have the right to conduct due diligence with respect to the Facility as set forth in Appendix I. Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.2, which Gulf Power may record to give public notice of such rights.

3.3 Purchase Option and Removal of the Facility After Termination. Upon the expiration of the Term, or if this Agreement terminates at any time prior to the expiration of the Term for any reason (including under Section 2.6 or Article 11), the following provisions and obligations and rights of the Parties shall survive such expiration or termination:

3.3.1 Within thirty (30) Days after such expiration or termination, Gulf Power shall elect by notice to Seller to either: (a) require Seller to remove the Facility from the Site; or (b) conduct due diligence on the Facility and potentially purchase the Facility and related assets;

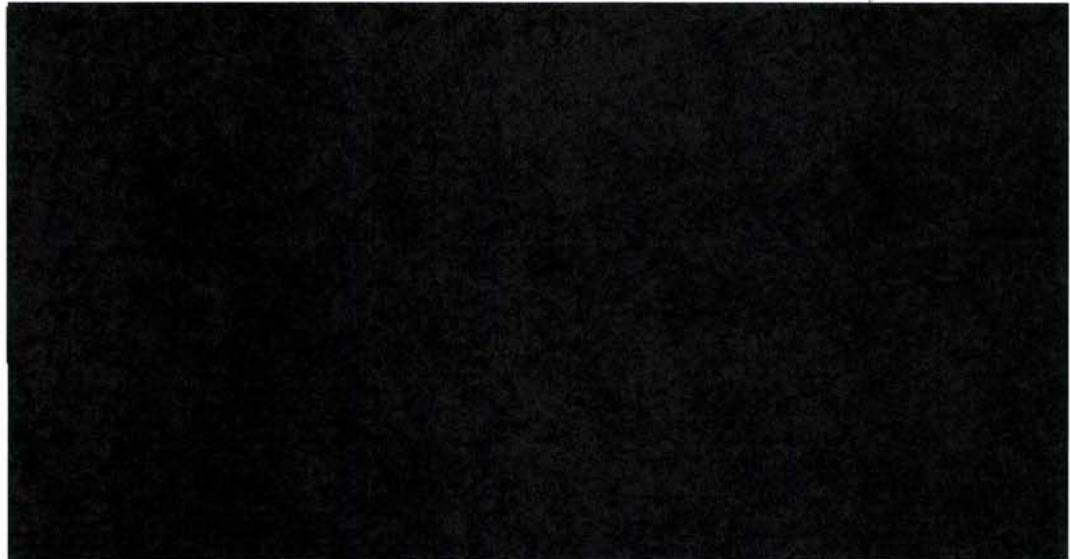


3.3.2 If Gulf Power elects to require Seller to remove the Facility from the Site, then within one hundred twenty (120) Days after such election is made, Seller shall at its sole cost and expense remove all facilities, equipment, components and parts of the Facility, and all interconnection facilities that are then owned by Seller, and restore the Site to as nearly as practicable the condition



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it was in prior to Seller's commencement of activities on the Site, consistent with the provisions of the Ground Lease. In the event that Seller does not fully comply with the foregoing obligation, then Seller shall be liable to Gulf Power for, and shall pay to Gulf Power on demand, all costs and expenses incurred by Gulf Power in connection with the removal of all facilities (including interconnection facilities), equipment, components and parts of the Facility and restoration of the Site to such condition.



3.3.4 Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.3, which Gulf Power may record to give public notice of such rights.

### 3.4 FPSC Approval.

3.4.1 Notwithstanding any other provision of this Agreement, in no event shall Gulf Power have any obligation to receive or purchase Solar Energy under this Agreement unless: (i) the FPSC approves this Agreement through the issuance of a final, non-appealable order without qualifications or conditions; or (ii) Gulf Power fails to exercise its right to terminate this Agreement pursuant to Section 3.4.3 and, as a result, Gulf Power is deemed to have waived its right to terminate this Agreement pursuant to Section 3.4.3.

3.4.2 Gulf Power shall use its reasonable efforts to obtain FPSC approval of this Agreement and in furtherance thereof, shall file a petition for approval as soon as reasonably practicable after the execution of the Agreement, and diligently pursue such FPSC approval. Seller agrees to assist and support Gulf Power, in a timely manner and to the extent reasonably requested by Gulf Power, in obtaining FPSC approval.

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3.4.3 If, after one hundred eighty (180) Days from the filing date by Gulf Power of a petition with the FPSC for approval of this Agreement ("FPSC Approval Target Date"), the FPSC has not approved this Agreement through the issuance of a final, non-appealable order without qualifications or conditions, or if the FPSC issues an order denying Gulf Power's petition for approval of the Agreement ("FPSC Denial") prior to the FPSC Approval Target Date, then Gulf Power may terminate this Agreement without liability or obligation upon written notice to Seller; provided, however, that such notice is delivered to Seller no later than thirty (30) Days after the first to occur of the FPSC Approval Target Date or the date of the FPSC Denial. If Gulf Power fails to exercise the aforementioned termination right within such thirty (30) Day period, then Gulf Power shall be deemed to have waived such termination right. Each Party agrees that it will not oppose, protest or contest the petition with the FPSC for approval of this Agreement. Once the final, non-appealable order approving this Agreement has been issued and is deemed accepted by Gulf Power, the Parties agree they will not seek to amend, oppose, protest or contest such FPSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such FPSC order.

3.4.4 If, at any time after having approved this Agreement, the FPSC issues an order with respect to this Agreement that prohibits Gulf Power from recovering from its customers some or all of the payments required to be made by Gulf Power to Seller under this Agreement ("Disallowance Order"), then Gulf Power shall be entitled to terminate this Agreement without liability or obligation upon written notice to Seller, provided that such written notice must be delivered to Seller no later than thirty (30) Days after the issuance of the Disallowance Order. In connection with the foregoing, Gulf Power and Seller agree to support and defend this Agreement and their respective rights to cost recovery and payment, against any challenge thereto by any Person.

### 3.5 Execution of Property Agreements.

3.5.1 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), Gulf Power and the owner of the Site have not entered into an agreement, with terms and conditions satisfactory to the Parties in their sole and absolute discretion, that: (i) provides Gulf Power, its Affiliates and/or partners the right to develop, construct, own and operate a solar generation facility on their own behalf on the Site; and (ii) provides Seller the right to develop, construct, own and operate the Facility on the Site pursuant to this Agreement, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the full execution of such an agreement; provided further, that Gulf Power shall notify Seller (by written, electronic or oral notice) after such an agreement has been fully executed. If a Party terminates this Agreement under this Section 3.5.1, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue



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prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

3.5.2 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), the Parties have not executed and delivered a Ground Lease providing Seller the right to develop, construct, own and operate the Facility on the Site, with terms and conditions that are satisfactory to each Party in its sole and absolute discretion, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the Parties' execution and delivery of a Ground Lease. If a Party terminates this Agreement under this Section 3.5.2, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

### 3.6 Preservation of Terms.

3.6.1 Each Party agrees that except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the other terms of this Agreement (including the right of a Party to terminate this Agreement as expressly set forth herein, including under Section 3.4.4), the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application by a Party to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

3.6.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement under Sections 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *NRG Power Marketing LLC v. Maine Public Utility Commission*, 130 S. Ct. 693 (2010).



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### ARTICLE 4: OPERATION AND MAINTENANCE OF THE FACILITY

4.1 General Standards. During the Term, Seller shall have the sole responsibility, at its sole expense, to manage, control, operate and maintain, or cause others to manage, control, operate and maintain, the Facility in accordance with Prudent Industry Practices, manufacturer's recommendations and the requirements set forth in this Agreement. Seller shall, and shall cause others that manage, control, operate and maintain the Facility to: (i) comply with all Legal Requirements applicable to Seller, Gulf Power or the owner of the Site, and (ii) diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

4.1.1 Seller and Gulf Power shall mutually develop written Operating Procedures to accommodate the specifications of the Facility as constructed by Seller within the earlier of one hundred and eighty (180) Days prior to the Commercial Operation Date or the first instance of parallel operation. Such Operating Procedures shall address: (i) deliveries of energy during start-up and testing of the Facility; (ii) the method of day-to-day communications; (iii) clearance and switching practices; (iv) hourly energy forecasting; (v) daily energy reports; (vi) Facility operations log; (vii) reactive power output; (viii) technical limitations of Facility operation; (ix) coordination of maintenance scheduling; (x) designation of Confidential Information; (xi) the procedure for substantiating the transfer of Environmental Attributes under this Agreement; (xii) the verification of information with respect to the production of Environmental Attributes transferred to Gulf Power hereunder for purposes of certification; and (xiii) such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying the Operating Procedures in writing to reflect mutually agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

4.1.2 Seller shall, or shall cause others to, employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. To the extent consistent with Prudent Industry Practices, Seller shall keep accurate records of any accident or other occurrence at the Site that results in material injury to persons or material damage to property. Seller shall provide to Gulf Power reasonable access to these records upon not less than seven (7) Days notice during normal business hours, but shall not be required to provide access to employment or medical records regarding Facility personnel, except results of drug screening tests.

#### 4.2 Access to the Facility.

4.2.1 Upon reasonable notice, representatives of Gulf Power shall have access to the Facility and to property owned or controlled by Seller that is related to the Facility in order to: (i) conduct tours of the Facility for other Persons (including members of the public) and otherwise provide other such Persons with the opportunity to view and photograph the Facility; (ii) inspect,



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maintain, and test meters and other Gulf Power equipment; (iii) interrupt, monitor, or measure energy generated by the Facility as it deems necessary in accordance with Prudent Industry Practice; (iv) inspect the Facility; and (v) take such other action as may be reasonably necessary to exercise Gulf Power's rights under this Agreement, provided that (a) such access shall not materially interfere with the testing or operations of the Facility, and (b) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety.

4.2.2 In no event shall any of Gulf Power's statements, representations, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the maintenance and operation of the Facility. Any inspection by Gulf Power of property or equipment owned or controlled by Seller, or any review of or consent to Seller's plans by Gulf Power, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee.

4.3 Availability of Records. Seller shall keep complete and accurate records and all other data for the purpose of proper administration of this Agreement in accordance with the following guidelines:

4.3.1 All such records shall be maintained for a minimum of seven (7) years after the creation of such record or data and for any additional period of time required by any Legal Requirement or Governmental Authority. In the event Seller intends to dispose of or destroy any such records after such seven (7) year period, Seller shall provide Gulf Power with thirty (30) Days prior written notice.

4.3.2 Seller shall maintain an accurate and up-to-date operating log with records of: (i) real power production for each clock hour; (ii) changes in operating status and scheduled maintenance; (iii) any unusual conditions found during inspections; and (iv) any significant events related to the operation of the Facility.

4.3.3 Upon reasonable advance notice, either Party shall have the right to examine the records and data of the other Party in order to facilitate any determination that such Party is required or permitted to make under this Agreement.

4.3.4 Any information provided by either Party pursuant to this Section 4.3 shall be subject to the confidentiality provisions set forth in Section 17.16.

4.3.5 Gulf Power and Gulf Power's independent auditor shall have the right to inspect from time to time, upon reasonable notice to Seller, such books and records of Seller as are reasonably necessary for Gulf Power to determine whether Seller constitutes a VIE and the Agreement represents a VI. To



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the extent such inspection requires access to confidential information of Seller, such information shall constitute Confidential Information subject to the provisions of Section 17.16 of this Agreement.

4.4 Scheduled Maintenance. Seller shall submit to Gulf Power, before October 1 of each Calendar Year, a schedule of planned Facility outages during which maintenance affecting three (3) MW or more of Facility generating capability will be performed for the next Calendar Year ("Scheduled Outages") (provided that Seller shall submit the first such schedule for the first Annual Period no later than ninety (90) Days before the commencement of the first Annual Period); provided, however, that: (i) Seller shall only conduct Scheduled Outages of the Facility during either (a) times that do not occur during a Daylight Period, or (b) a Daylight Period occurring in the Month of December; and (ii) there shall be no more than twenty (20) hours of Scheduled Outages during the total aggregate Daylight Periods of any given Month of December. Gulf Power shall have thirty (30) Days to review the proposed schedule of Scheduled Outages and may approve or reject such schedule in whole or in part, and may suggest alternative dates for Scheduled Outages. Scheduled Outages are subject to the prior approval of Gulf Power. Seller shall resubmit revised schedules for Scheduled Outages to Gulf Power within thirty (30) Days after Gulf Power's disapproval of a previous schedule, and Gulf Power and Seller agree to use commercially reasonable efforts to promptly develop schedules for Scheduled Outages that are mutually acceptable to the Parties.

4.5 Station Service. Seller shall be required to enter into a separate standard retail agreement with Gulf Power (or another appropriate entity permitted to serve customers at the Facility's location) for Station Service not directly provided by the Facility and will be responsible for bearing all associated costs.

4.6 Unplanned Outages. In addition to Scheduled Outages, Seller shall use commercially reasonable efforts to promptly notify Gulf Power of any event or condition (other than lack of or variations in sunlight) that will result in the Facility not being able to produce Solar Energy or a reduction of three (3) MW or more in the generating capability of the Facility, in either case, for more than sixty (60) consecutive minutes, including forced outages at the Facility and Force Majeure Events affecting the Facility. Such notices shall contain information describing such event or condition, the beginning date and time of such event or condition, the expected end date and time of such event or condition, the amount of Solar Energy that Seller expects will be provided during such event or condition, and any other information reasonably requested by Gulf Power. With respect to any such event or condition, Seller shall provide Gulf Power with such notice by any reasonable means required by Gulf Power, including by telephone or electronic mail. To the extent reasonably practicable, Seller shall cause any unplanned outages to occur during hours that are not within Daylight Periods.

### 4.7 Operating Committee.

4.7.1 The Parties shall establish an Operating Committee comprised of two (2) Operating Representatives, one (1) appointed by each of Seller and Gulf Power. Seller and Gulf Power, as the case may be, shall provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The Operating Representatives



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shall meet as necessary, but not less often than once each Calendar Year, at a mutually agreeable time and place upon prior written notice. The Operating Representatives shall represent the Parties in all matters arising hereunder that may be delegated to them by mutual agreement of the Parties, but shall not have any authority to modify or amend the terms of this Agreement.

4.7.2 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be submitted to senior officers for discussion and resolution. All decisions and agreements made by the Operating Representatives or their principals shall be evidenced in writing.

### 4.8 Availability Forecasting.

4.8.1 Seller shall provide Gulf Power with forecasts of the delivery of energy under this Agreement as described below. Such availability forecasts shall include the updated status of all Facility equipment that may impact availability. Seller shall use commercially reasonable efforts to forecast the delivery of energy under this Agreement accurately and to transmit such information in a format reasonably acceptable to Gulf Power. Gulf Power and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Gulf Power.

4.8.2 No later than September 1 of each Calendar Year, Seller shall provide to Gulf Power a non-binding forecast of the hourly delivery of energy under this Agreement for an average Day in each Month of the following Calendar Year in a form reasonably acceptable to Gulf Power.

4.8.3 Ten (10) Business Days before the commencement of the first Annual Period, and thereafter ten (10) Business Days before the beginning of each Month during the Term, Seller shall provide to Gulf Power a non-binding forecast of the Hourly energy deliveries under this Agreement for each Day of the following Month in a form reasonably acceptable to Gulf Power.

4.8.4 No later than 5:00 a.m. (Central Prevailing Time) of each Day, Seller shall provide Gulf Power a non-binding forecast of energy deliveries under this Agreement for the remainder of such Day and the following seven (7) Days in a form reasonably acceptable to Gulf Power. Each such notice shall clearly identify, for each hour, Seller's forecast of all deliveries of energy pursuant to this Agreement. In the event that Seller foresees that actual deliveries under this Agreement for any Day will be materially different than a forecast previously provided for such Day, Seller shall, as soon as reasonably possible, provide notice to Gulf Power of such change and an updated forecast. The Operating Committee shall determine what constitutes such a material change and

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identify the Operating Representative of Gulf Power that should receive notice of such change.

### 4.9 Weather Station and Data.

4.9.1 No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least four (4) stand-alone meteorological stations at the Site to monitor and report the meteorological data required under Section 4.9.2. Seller shall maintain the meteorological station as necessary to provide accurate data with respect to the location of the Facility.

4.9.2 Upon Commercial Operation, and continuing through the end of the Term, Seller shall record and maintain the following data:

- (i) real power production by the Facility for each Hour;
- (ii) changes in operating status and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Facility; and
- (v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Facility: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, precipitation, barometric pressure, back of module surface temperature and other pertinent meteorological conditions.

Gulf Power shall have real-time access to the required meteorological data at a frequency not to exceed every five (5) minutes. Seller shall provide Gulf Power a report within fifteen (15) Days after the end of each Month that provides the foregoing information for such Month as well as any other additional information that Gulf Power reasonably requests regarding the operation of the Facility that is collected and maintained by Seller in the ordinary course of Facility operations. Gulf Power reserves the right to validate any of the meteorological data provided by Seller with information publicly available from NOAA and nearby weather stations.

4.9.3 Seller shall make available to Gulf Power all data from any weather monitoring portals Seller elects to install at the Site.



## EXECUTION VERSION

### ARTICLE 5: PERFORMANCE SECURITY

#### 5.1 Seller's Provision of Performance Security.

5.1.1 If at any time there shall occur or exist a Security Posting Condition with respect to Seller, then Seller shall immediately notify Gulf Power thereof and, within three (3) Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Gulf Power, Performance Security that secures all of Seller's obligations to Gulf Power under this Agreement, in an amount not less than the Required Seller Post Amount. The Parties acknowledge and agree that, as of the Effective Date, a Security Posting Condition exists with respect to Seller and, accordingly, Seller shall provide such Performance Security to Gulf Power on the Effective Date and thereafter maintain such Performance Security in accordance with this Agreement.

5.1.2 So long as no Event of Default by or attributable to Seller and no Security Posting Condition shall have occurred and be continuing, Gulf Power shall cooperate with Seller, at Seller's request and expense, to release and return to Seller the Performance Security theretofore provided by Seller to and then held by Gulf Power.

5.1.3 If, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be more than the amount of the Performance Security provided by Seller to and then held by Gulf Power, Seller shall, within three (3) Business Days of Gulf Power's request, have additional Performance Security in the amount of such difference provided to Gulf Power. So long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, if, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be less than the amount of the Performance Security theretofore provided by Seller to and then held by Gulf Power, Gulf Power shall cooperate with Seller, at Seller's request and expense, to have the Performance Security then held by Gulf Power reduced by the amount of such difference, subject to Seller's obligation to thereafter provide to Gulf Power and maintain Performance Security in order to comply with the provisions of this Agreement.

5.1.4 For the avoidance of doubt, in the event that Gulf Power draws upon and/or realizes payment from the Performance Security provided by Seller under this Agreement, immediately upon such draw or payment, Seller shall provide to Gulf Power an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Gulf Power hereunder continues to be equal to or greater than the Required Seller Post Amount.



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5.1.5 If at any time a guaranty provided by Seller as a Seller Guaranty no longer satisfies the definition of Seller Guaranty under this Agreement (including due to the guarantor having a Material Adverse Financial Condition), Seller shall provide Gulf Power with other Performance Security that satisfies the requirements of this Agreement within three (3) Business Days of such occurrence and thereafter maintain such Performance Security pursuant to this Agreement.

5.2 Use of Performance Security. Gulf Power shall be entitled to draw upon and/or be paid from the Performance Security provided by Seller: (i) for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Event of Default has occurred, a termination date has been declared under Section 11.3, or this Agreement has expired or otherwise been terminated; (ii) if such Performance Security is within ninety (90) Days of expiry, expiration or termination and substitute or replacement Performance Security that satisfies the requirements of this Agreement as to form, issuer and amount has not been provided; and/or (iii) otherwise in compliance with the terms of such Performance Security.

5.3 Return of Performance Security. Gulf Power shall return the Performance Security to Seller upon the later to occur of: (i) the expiration or termination of this Agreement; and (ii) the indefeasible and irrevocable payment and performance of all of Seller's obligations under this Agreement.

## ARTICLE 6: INTERCONNECTION AND METERING

### 6.1 Interconnection.

6.1.1 By no later than thirty (30) Days after the Effective Date, Seller shall submit a request, pursuant to the applicable interconnection process of the Transmission Provider, to interconnect the Facility to the Electric System. Seller shall maintain and use diligent efforts to pursue such interconnection of the Facility in accordance with the applicable interconnection process, including the timely execution and submission of all required study agreements, fees, deposits and other charges. Seller shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.


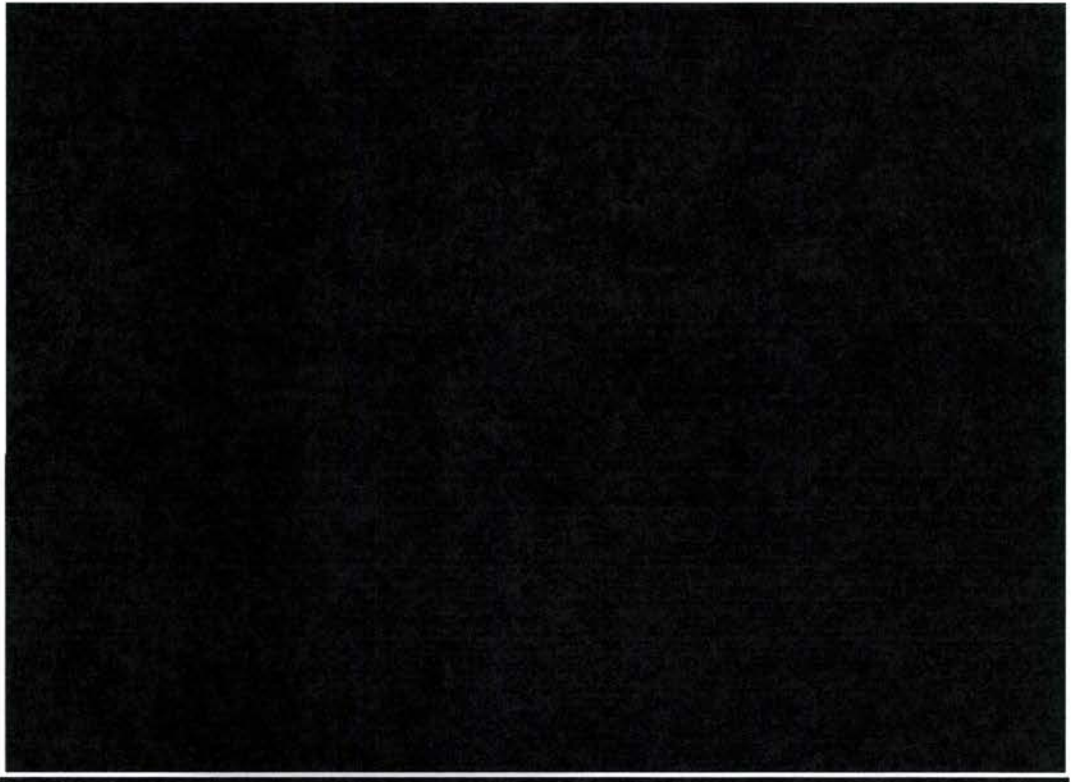
6.1.2 If at any time, based on interconnection studies or otherwise, Gulf Power determines that the Transmission Provider and/or Gulf Power will be responsible, in the aggregate, for costs and expenses associated with the interconnection of the Facility to the Electric System (including under the Interconnection Agreement, whether for network upgrades or other facilities, and including all amounts that would be required to be repaid or refunded to Seller in connection with upgrades and facilities associated with interconnection and related interest and tax payments) in an amount that exceeds the Interconnection Cost Threshold, Gulf Power shall be entitled to terminate this Agreement by providing notice to Seller. Upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for liabilities and

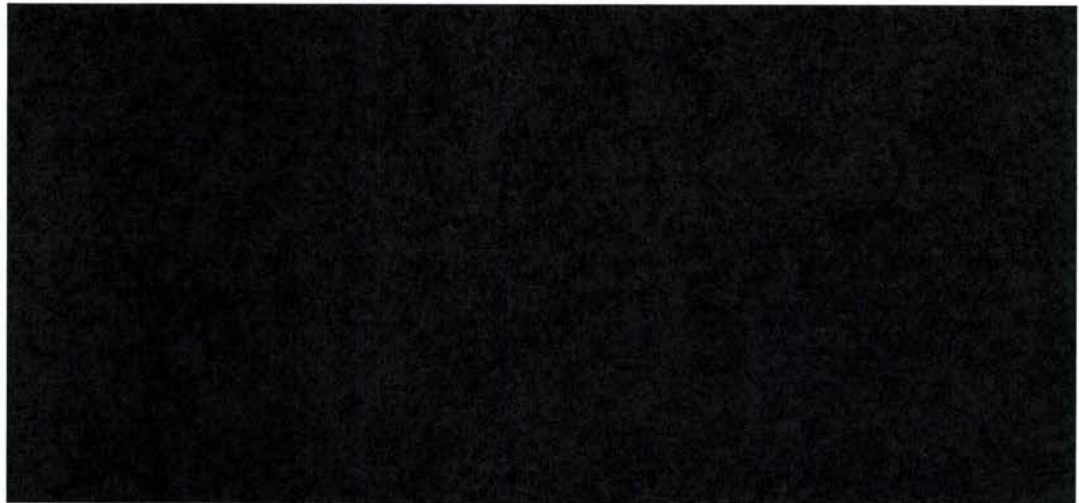


## EXECUTION VERSION

obligations that survive termination as provided in this Agreement or which accrue prior to or at termination.

6.1.3 Seller shall use diligent efforts to execute an Interconnection Agreement with Transmission Provider within thirty (30) Days of being presented with an executable version of the Interconnection Agreement (including, as determined by Gulf Power, an agreement that is not under the Southern OATT that can be used for Qualifying Facilities). The Parties agree that the Interconnection Agreement shall contain terms and conditions that are consistent with the Interconnection Requirements set forth in Appendix H, as well as other material terms, conditions and requirements pursuant to the interconnection policies and requirements of the Transmission Provider and its Affiliates. Thereafter, the Interconnection Agreement shall be maintained throughout the Term of this Agreement. Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Gulf Power in accordance with the notice provisions of Section 17.11. Gulf Power shall not be responsible under this Agreement for any costs and expenses (including overheads) incurred in connection with the design, construction, installation and maintenance of the facilities under the Interconnection Agreement. Seller is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.





6.1.6 If the Facility does not reach Commercial Operation, and if costs relating to transmission or other Transmission Provider Installed Facilities were incurred in connection with this Agreement or the Interconnection Agreement, in addition to Seller's other obligations under this Agreement (including under Section 2.6), Seller shall owe and be liable to Gulf Power for such costs.

6.2 Metering.

6.2.1 The Parties shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Industry Practices in order to measure and record the amount of Solar Energy delivered from the Facility to the Point of Delivery. The meters shall be of a mutually acceptable accuracy range and type. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by Gulf Power for the purpose of determining the amount of Solar Energy delivered to the Point of Delivery. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Gulf Power. Seller, may, at its own cost, install additional meters or other such facilities, equipment or devices on Seller's side of the Point of Delivery as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Gulf Power will be entitled to base its invoiced amounts solely by reference to its own Metering System.

6.2.2 Gulf Power shall inspect and test all meters at such times as will conform to Prudent Industry Practices, but not less often than every two (2) Annual Periods. Upon reasonable written request to Gulf Power, Seller may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Annual Periods. Seller shall be responsible, and shall reimburse Gulf Power, for all costs and expenses incurred by or on behalf of Gulf Power in connection with such inspections or tests.



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6.2.3 If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the metering System to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Gulf Power shall pay Seller any additional amounts then due for deliveries of Solar Energy during the Adjustment Period or Gulf Power shall be entitled to a credit against any subsequent payments for Solar Energy, as the case may be.

6.2.4 Without limiting the requirements of Section 6.2.1, Gulf Power and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of Seller's metering equipment.

## ARTICLE 7: PURCHASE AND SALE OF ENERGY; ENVIRONMENTAL ATTRIBUTES; TRANSMISSION AND CURTAILMENT

### 7.1 Energy.

7.1.1 During each Annual Period, Seller agrees to sell and deliver to the Point of Delivery, and Gulf Power agrees to purchase and receive at the Point of Delivery, one hundred percent (100%) of the Solar Energy generated by the Facility and delivered by Seller to the Point of Delivery. Seller shall provide and deliver to Gulf Power Solar Energy pursuant to this Agreement at all times, and to the extent, that the Facility is available and is capable of producing energy. Seller shall not sell or provide Solar Energy to any Person other than Gulf Power. In addition, Gulf Power shall be entitled to all revenues that may be received by Seller from any other Person(s) for any and all Electrical Products.

7.1.2 Appendix F provides the method for determining Seller's expectation of the nominal annual amounts of Solar Energy to be delivered to Gulf Power, having taken into consideration expected solar panel degradation, which constitute the "Annual Energy Contract Amount." Payments to the Seller for actual Solar Energy delivered to the Point of Delivery will be determined as set forth in Appendix A.



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7.1.3 In consideration of the sale and purchase of Solar Energy under this Agreement, Seller shall transfer to Gulf Power at no additional cost any and all Environmental Attributes associated with such Solar Energy at the time the Solar Energy is delivered to the Point of Delivery, pursuant to Section 7.5.

7.2 Testing and Test Energy and Associated Environmental Attributes. Seller shall not commence initial deliveries of Solar Energy to the Point of Delivery without the prior written consent of Gulf Power. Gulf Power shall purchase Solar Energy (and Seller shall transfer to Gulf Power all associated Environmental Attributes) produced by Seller during Facility testing and start-up procedures at such times and under conditions acceptable to Gulf Power and Seller at a rate equal to seventy percent (70%) of AIER for the relevant hour(s) and otherwise in accordance with the terms of this Agreement. Representatives of Gulf Power shall have the right to be present during any such testing. Gulf Power shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to achieve Commercial Operation, including coordination of the production and delivery of test energy. Seller shall provide Gulf Power not less than thirty (30) Days written notice before any testing to establish the Facility's Commercial Operation Date.

7.3 Title and Risk of Loss. Title and risk of loss of Solar Energy shall pass from Seller to Gulf Power at the Point of Delivery.

7.4 Expansion of the Facility. Seller, or any Affiliates thereof, shall not enter into any contract for the sale of solar energy, Environmental Attributes or Electrical Products from any addition to or expansion of the Facility, until and unless (i) Seller shall have first offered in writing (in the form of a proposal contract) to enter into a contract with Gulf Power on business terms substantially the same, or more favorable to Gulf Power, as those specified in a) any proposal or letter of intent between Seller and any other party with respect thereto or b) this Agreement, and (ii) Gulf Power does not accept such offer within sixty (60) Days of the date presented to Gulf Power in writing (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller) and including a notice to Seller that Gulf Power is ready and willing to enter into a contract reflecting such business terms within ninety (90) Days thereafter (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller). For the avoidance of doubt, nothing in this Section 7.4 shall be construed to abrogate the obligation to sell and purchase renewable energy pursuant to PURPA.

7.5 Provision of Environmental Attributes. In consideration of the purchase of Solar Energy under this Agreement, Seller shall transfer, deliver and otherwise provide to Gulf Power at no additional cost all Environmental Attributes associated with such Solar Energy. Said Environmental Attributes shall be transferred, delivered and otherwise provided to Gulf Power as soon as practicable, but in no event later than thirty (30) Days after the associated Solar Energy was generated.

7.5.1 All Environmental Attributes provided by Seller to Gulf Power under this Agreement shall be sourced from the Facility.

7.5.2 Gulf Power shall have exclusive rights to all Environmental Attributes associated with the Solar Energy, which shall include the exclusive right to: (i) claim that energy from the Facility was generated from a renewable



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type of fuel; (ii) report that it owns the Environmental Attributes to any Governmental Authority or other party for compliance with any Legal Requirement or other purposes; and (iii) claim the Environmental Attributes to customers or potential customers for purposes of marketing and advertising, provided, however, Seller and its Affiliates shall be entitled to issue marketing materials and other statements regarding their respective operations and business activities but only so long as the issuance of such materials and statements does not reduce the economic value to Gulf Power of the Environmental Attributes to be transferred hereunder or otherwise reduce Gulf Power's claims to such Environmental Attributes or result in the double counting of such Environmental Attributes.

7.5.3 Seller shall maintain and provide to Gulf Power (or, if directed by Gulf Power, other applicable Persons) such information as may be necessary to substantiate, account for, and track the quantity of Environmental Attributes associated with the Facility, including all information necessary for Gulf Power to comply with the requirements of any Governmental Authority or other certifying or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Seller shall provide Gulf Power with attestations regarding the accuracy of such information as reasonably requested by Gulf Power. Gulf Power shall have the right to disclose such information publicly or to any third party, without the prior consent of Seller, as reasonably required in connection with the operation of Gulf Power's business, including disclosures: (i) to any entity or person that purchases the Environmental Attributes from Gulf Power; (ii) to any Governmental Authority; (iii) to any auditors or any Person that certifies or sets standards with respect to Environmental Attributes; and (iv) as necessary for Gulf Power to defend, verify or substantiate its ownership of the Environmental Attributes under this Agreement.

7.5.4 At Gulf Power's request, Seller shall take all necessary action, including the completion and submission of all required attestation forms and other information, in order to obtain certification by Green-e Energy pursuant to the Green-e National Standard (or other certification from such other entity designated by Gulf Power) of the Facility and all Environmental Attributes required to be provided under this Agreement. Seller shall be responsible for all costs and expenses associated with obtaining such certification, except for such costs and expenses that are required to be paid to Green-e or other non-Affiliates of Seller, which shall be the responsibility of Gulf Power.

7.5.5 In no way shall the right to, transfer of, or acquisition of Environmental Attributes under this Agreement be deemed to cause Gulf Power to be deemed an owner or operator of the Facility or in any way cause Gulf Power to be responsible for the Facility's compliance with any Legal Requirements.



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### 7.6 Gulf Power Network Transmission.

7.6.1 With respect to the energy required to be delivered to Gulf Power under this Agreement, Gulf Power shall request network transmission service from the Facility on a long-term basis, by requesting the Facility to be designated as a Network Resource, for serving Gulf Power's network load, but only if such designation does not require the construction or installation of transmission upgrades or other facilities on the Electric System (excluding the Transmission Provider Installed Facilities to be constructed pursuant to the Interconnection Agreement to interconnect the Facility to the Electric System). Any such designation that is made available to Gulf Power pursuant to such request shall be obtained and maintained by Gulf Power commencing on the date that energy deliveries begin under this Agreement and thereafter throughout the Term. Such request shall be consistent with the Network Resource process described in Section 30 of the Southern OATT (or any successor provision).

7.6.2 No later than thirty (30) Days after the Interconnection Agreement is executed by Seller and the Transmission Provider, Gulf Power shall confirm to Seller whether the Facility can be designated as a Network Resource from the date that service commences under this Agreement through the end of the Term, without the construction or installation of transmission upgrades or other facilities, as described in Section 7.6.1. In the event such Network Resource designation cannot be made for any reason, then Gulf Power shall notify Seller of the same and this Agreement shall immediately terminate. Upon a termination pursuant to this Section 7.6.2, neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

7.6.3 Notwithstanding the foregoing provisions of this Section 7.6, and for the avoidance of doubt, because network transmission service is the type of service (as opposed to point-to-point service) required for serving Gulf Power's native load, Gulf Power shall have no obligation to procure or obtain point-to-point transmission service or any other type of transmission service on the Electric System other than the service described in Section 7.6.1.

### 7.7 Transmission Curtailment.

7.7.1 Notwithstanding any other provision of this Agreement, Gulf Power shall be entitled to require Seller to curtail or cease energy deliveries under this Agreement during any period to the extent that: (i) there is an Emergency or Gulf Power reasonably anticipates that an Emergency will occur; (ii) there is a Transmission Curtailment Event occurring or existing; or (iii) Gulf Power is unable to receive Solar Energy from the Facility at the Point of Delivery, or Gulf Power is unable to transmit such energy to Gulf Power's customers, due to a Force Majeure Event affecting Gulf Power or its systems, facilities or equipment. Seller shall comply with any such requirement as directed by Gulf Power, and



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Gulf Power shall be relieved from the obligation to purchase and receive Solar Energy to the extent of the required curtailment or cessation of deliveries. The amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.7.1 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.7.2 Under no circumstance will Gulf Power be required to take any of the following actions in order to facilitate or enable energy under this Agreement to be received by, or transmitted or delivered to, any Person: (i) the construction or installation of any additions or upgrades to any transmission or distribution facilities (except as specifically provided in the Interconnection Agreement); (ii) the curtailment or interruption of service to any customer of Gulf Power or any of its Affiliates; or (iii) the undertaking of congestion management procedures (including redispatch of any other generation resource).

7.8 Curtailments under the Interconnection Agreement. Gulf Power shall be entitled to require Seller to curtail or cease deliveries of Solar Energy under this Agreement or disconnect the Facility from the Electric System for any of the reasons set forth in the Interconnection Agreement and during periods of maintenance, repair or replacement of interconnection facilities, including Seller Installed Facilities, owned and operated by Gulf Power. In such event, Gulf Power shall be relieved from the obligation to purchase and receive energy to the extent of the required curtailment, cessation and/or disconnection, and such energy that Gulf Power is not required to purchase and receive shall be excluded from the determination of Annual and Monthly Delivered Energy for all purposes of this Agreement. Except to the extent that such required curtailment or cessation of deliveries is due to a condition or circumstance existing with respect to Seller's facilities or equipment, the amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.8 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

### 7.9 Other Operational Curtailments.

7.9.1 In addition to any required curtailment or cessation of deliveries for the reasons set forth in Section 7.7 or Section 7.8, Gulf Power shall be entitled to require Seller to curtail or cease the delivery of energy under this Agreement in Gulf Power's discretion due to operational reasons associated with load balancing. Seller shall comply with any such requirement as directed by Gulf Power. Any hour for which Gulf Power directs the curtailment or cessation of deliveries of energy under this Section 7.9.1 (excluding the curtailment or cessation of deliveries required by Gulf Power for a reason under Section 7.7 or Section 7.8) shall be referred to as a "Load Balancing Hour".



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7.9.2 The amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive under Section 7.9.1 for the first twenty (20) Load Balancing Hours of each Calendar Year shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.9.3 If Gulf Power requires the curtailment or cessation of deliveries under Section 7.9.1 in excess of twenty (20) Load Balancing Hours in a given Calendar Year, then the amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive(s) under Section 7.9.1 during such excess Load Balancing Hours shall constitute Deemed Delivered Energy. Such Deemed Delivered Energy will be included in both the Annual Delivery Percentage and Annual and Monthly Delivered Energy calculations in Appendix A.

7.10 Determination. In the event that Gulf Power exercises its rights to require the curtailment or cessation of deliveries of energy as provided in Section 7.7, Section 7.8, or Section 7.9, then the resulting amounts of Curtailed Energy and Deemed Delivered Energy (as applicable) shall be determined by an agreed upon methodology approved by the Operating Committee, which shall take into account, for the relevant time period, Facility availability information, weather conditions and other pertinent Facility data. In addition, notwithstanding any other provision of this Agreement, there shall be no amounts of Curtailed Energy or Deemed Delivered Energy attributable to periods prior to COD.

## ARTICLE 8: MONTHLY ENERGY PAYMENTS

### 8.1 Monthly Energy Payments.

8.1.1 Gulf Power shall pay Seller a Monthly Energy Payment in accordance with Appendix A for Solar Energy delivered to the Point of Delivery by Seller during each Annual Period. If a true-up pursuant to the provisions of Section 2 of Appendix A results in an over/under payment for a Calendar Year, then, following notice by Gulf Power of such over/under payment, and unless the Parties agree otherwise, Seller shall remit the overpayment amount, or receive the underpayment amount, in full from the next succeeding twelve (12) Monthly Energy Payment(s) until such over/under payment is satisfied in full; provided that for an over/under payment determined at the end of the Term, Seller shall remit the total overpayment, or receive the total underpayment amount, within twenty (20) Days after such amount is determined by Gulf Power.

8.1.2 Seller acknowledges and agrees that all price information provided by Gulf Power to Seller is Confidential Information subject to Section 17.16.



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8.1.3 Gulf Power's obligation to pay the Monthly Energy Payment shall commence for Solar Energy deliveries on and after the Commercial Operation Date.

### ARTICLE 9: PAYMENT PROCEDURE

#### 9.1 Billing and Payment.

9.1.1 As promptly as practicable after the first Month that energy deliveries commence under this Agreement and each Month of the Term thereafter, Gulf Power shall provide Seller with the meter readings for such Month no later than the fifteenth (15th) Business Day of the following Month.

9.1.2 Within ten (10) Business Days of receipt of the Monthly meter readings, Seller shall provide Gulf Power with an invoice stating the Monthly Energy Payment calculated for such Month pursuant to Section 8.1.

9.1.3 At the option of Seller, Gulf Power will provide a net payment or net bill, whichever is applicable, that consolidates amounts owing to Seller with amounts owing to Gulf Power.

9.1.4 Each Monthly payment shall be due and payable on or before the twentieth (20th) Day after a Party's receipt of such invoice. If such twentieth (20th) Day after a Party's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Payment of an invoice shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before such twentieth (20th) Day, then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded at the Interest Rate.

#### 9.2 Billing Disputes and Final Accounting.

9.2.1 The Parties shall each have until the three hundred sixty-fifth (365th) Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

9.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party (the "Billing Dispute Notice") that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount.

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9.2.3 In the event that a Party, by timely notice in accordance with Sections 9.2.1 and 9.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within twenty (20) Days following receipt by the other Party of the Billing Dispute Notice, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error (the "Dispute Review Notice"). Reimbursements determined to be due from a Party under this Section 9.2.3 shall be included on the next Monthly invoice and shall include interest from the date the original payment was received until the date such reimbursement together with interest is invoiced, which interest shall be compounded at the Interest Rate.

9.2.4 In the event a Party disputes the other Party's resolution under Section 9.2.3 of any question or contest by such Party of the correctness of any charge or credit contained in a Monthly invoice, then the Parties shall submit the dispute for resolution in accordance with Article 16.

## ARTICLE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants. Seller makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.1.1 Seller is a limited liability company, duly organized and validly existing under the laws of the state of Florida, is the sole owner of the Facility and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.1.2 The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, any charter, bylaw, operating agreement or other formation or organizational document of Seller, or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound.

10.1.4 This Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may



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be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.1.5 There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof or that could reasonably be expected to have a material adverse effect on Seller.

10.1.6 Seller covenants to Gulf Power that it shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance (and specifically including any increase in property taxes or ad valorem taxes that result from the existence of the Facility on the Site); (ii) the production, sale and delivery of Solar Energy under this Agreement; and (iii) the production and provision of Environmental Attributes under this Agreement, in any case of the foregoing (i), (ii) or (iii) whether such charges, taxes, assessments or fees are assessed on Seller or Gulf Power. It is the intent of the Parties that such charges, taxes, assessments or fees for which Seller is responsible shall include any sales, transfer and other similar charges, taxes, assessments or fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement and the provision of Environmental Attributes to Gulf Power under this Agreement, whether the same are imposed on Seller or Gulf Power.

10.1.7 From the Effective Date through the end of the Term, Seller covenants that from its perspective and due to any of Seller's actions, Gulf Power will not be required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by the Financial Accounting Standards Board, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements. Seller covenants to promptly notify Gulf Power following any determination made by Seller or its independent auditor that Seller constitutes a VIE for which Gulf Power is the Primary Beneficiary as a result of this Agreement considered individually or together with any other power purchase agreements between Seller and Gulf Power. At the time of execution of this Agreement and thereafter prior to each June 1 occurring during the Term, Seller shall provide Gulf Power a VIE certification form in the form of Appendix D signed by the chief financial officer of Seller.

10.1.8 Seller shall enter into the Interconnection Agreement and remain in compliance with the Interconnection Agreement.

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10.1.9 With respect to the Environmental Attributes provided to Gulf Power under this Agreement, Seller represents, warrants and covenants throughout each Annual Period that:

10.1.9.1 Seller has, and shall transfer to Gulf Power good and marketable title to such Environmental Attributes;

10.1.9.2 Such Environmental Attributes satisfy and comply with all of the requirements of the Green-e National Standard for certification by Green-e and therefore constitute certifiable Green-e Renewable Energy Certificates; provided that the Parties recognize that, as of the Effective Date, Green-e will only certify Renewable Energy Certificates from a given generation facility as being eligible for meeting the Green-e National Standard for a fifteen (15) year term and Seller shall not be in violation of this Section 10.1.9.2 solely by reason of the age of the Facility exceeding any Green-e facility age limitations (as of the Effective Date or in the future).

10.1.9.3 Seller has the right to, and shall, deliver and provide all Environmental Attributes (and all rights, title and interest to such Environmental Attributes) to Gulf Power free and clear of any liens, taxes, claims, security interests and any other encumbrances;

10.1.9.4 Seller has not sold or transferred any of the Environmental Attributes to any other Person;

10.1.9.5 The Environmental Attributes are separate from the electric energy generated by the Facility;

10.1.9.6 Neither the Environmental Attributes nor the electric energy that was generated with the Environmental Attributes have been utilized by Seller or any Person (other than Gulf Power or any person to whom Gulf Power sells or transfers the same) to satisfy or comply with any Legal Requirement or any voluntary or involuntary renewable energy requirement or standard, including any renewable portfolio standard, renewable energy standard or any other similar standard or requirement;

10.1.9.7 The Environmental Attributes include all those products or rights relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits, in each case as specified in and required by the definition of Environmental Attributes, and they have not been used to satisfy or comply with other greenhouse gas or carbon reduction requirements, standards, obligations, or initiatives. The electric energy that was generated with the Environmental Attributes has not been sold, separately marketed or otherwise separately represented as renewable energy by any other person;



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10.1.9.8 To Seller's knowledge, no Person has made any claim or statement in any form that a Person other than Gulf Power or any person to whom Gulf Power sells or transfers the same owns or possesses any right, title, or interest in or to any of the Environmental Attributes;

10.1.9.9 Except as permitted under Section 7.5.2, neither Seller nor any of its Affiliates has made any claim or statement in any form that the energy that was generated with the Environmental Attributes was generated from solar rays or other sustainable, perpetual, renewable or other particular type of fuel, including: (i) in any marketing or advertising materials; (ii) any product content label or other disclosures regarding fuel mix; (iii) any reports under any emissions trading program, public or private; or (iv) any report or disclosure for purposes of complying with a Legal Requirement of meeting any renewable portfolio standard, renewable energy standard, or carbon reduction initiative (whether voluntary or involuntary);

10.1.9.10 No Environmental Attributes required to be transferred to Gulf Power under this Agreement violate any applicable rules or requirements of any certification authority (whether with respect to voluntary or involuntary certification) or Governmental Authority pertaining to double counting; and

10.1.9.11 Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

10.1.10 Nothing in Section 10.1.9 shall be interpreted or construed as relieving or diminishing any obligation of Seller to provide Environmental Attributes that are in conformance with the requirements of Section 7.5.

10.2 Gulf Power Representations, Warranties and Covenants. Gulf Power makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.2.1 Gulf Power is a corporation, duly organized and validly existing under the laws of the state of Florida and has the legal power and authority to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.2.2 The execution, delivery and performance by Gulf Power of this Agreement have been duly authorized by all necessary corporate action, and

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do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or any charter, bylaw, or other formation or organizational document of Gulf Power, or any agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Gulf Power is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

10.2.4 This Agreement is the legal, valid and binding obligation of Gulf Power enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.2.5 There is no pending, or to the knowledge of Gulf Power, threatened action or proceeding affecting Gulf Power before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

10.2.6 Gulf Power shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to subsequent sales made by Gulf Power to other Persons of the Solar Energy and Environmental Attributes received by Gulf Power under this Agreement. It is the intent of the Parties that such charges, taxes, assessments and fees for which Gulf Power is responsible shall not include any sales, transfer and other similar charges, taxes, assessments and fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement or the provision of Environmental Attributes to Gulf Power under this Agreement.

10.3 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by Seller and by Gulf Power in or under this Agreement shall survive the execution and delivery of this Agreement and any action taken pursuant hereto.

## ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1 Default by Seller. Any one or more of the following events shall constitute an Event of Default by Seller and shall give Gulf Power the right to exercise the remedies specified in Section 11.3:

11.1.1 Seller: (i) sells or provides Solar Energy or Environmental Attributes from the Facility to a third party during any Annual Period, except for any sales solely attributable to any additional or expanded portion of the Facility



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for which Seller had complied with Section 7.4 and Gulf Power has declined to accept the offer for such Solar Energy under Section 7.4, or (ii) makes any sales of Solar Energy from the Facility in violation of PURPA, as applicable.

11.1.2 Seller fails to comply or cause compliance with the requirements of Article 5 unless cured by the end of the next Business Day following receipt of a written notice from Gulf Power of a failure under this Section 11.1.2.

11.1.3 Seller fails to provide Gulf Power with the Minimum Energy Contract Amount for two consecutive Calendar Years, provided, however, that any Curtailed Energy for a Calendar Year shall count toward the Minimum Energy Contract Amount for such Calendar Year for the purpose of this Section 11.1.3.

11.1.4 Seller fails to pay Gulf Power any undisputed amount payable by Seller to Gulf Power pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Seller fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Gulf Power.

11.1.5 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, which was sought by an entity other than Seller, adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

11.1.6 Seller shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Seller of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.



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11.1.7 A violation of the requirements of Section 17.1.1 through a sale, assignment or transfer of this Agreement, or a violation of Section 17.2.

11.1.8 Any representation or warranty made by Seller herein or in any certificate delivered to Gulf Power pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Gulf Power of such representation or warranty having been incorrect;

11.1.9 Any failure of any covenant made by Seller in Section 10.1.7 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller must submit a cure plan prior to the end of such thirty (30) Day period outlining steps to assure Gulf Power that the failure will be cured, which cure plan shall be subject to Gulf Power's approval, such approval not to be unreasonably withheld, conditioned or delayed by Gulf Power, but in no event shall the total cure period exceed one hundred and eighty (180) Days) and such cure removes any adverse effect on Gulf Power of such failure of such covenant; provided, however, that no Event of Default by Seller shall occur pursuant to this Section 11.1.9 if Seller cooperates with Gulf Power during the cure period and Seller takes commercially reasonable actions (without causing a material adverse effect on Gulf Power) necessary to bring about a determination by the end of the cure period by Gulf Power and its independent auditor that Seller does not constitute a VIE in Gulf Power's or any of its Affiliates' financial statements for which Gulf Power is the Primary Beneficiary as a result of this Agreement; provided, further, if Gulf Power becomes a Primary Beneficiary by no fault of Seller and a cure cannot be effected within the cure period, Gulf Power may terminate this Agreement, Seller shall not have any further obligation or liability to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.10 Gulf Power is required by any Legal Requirement or any accounting standard, including those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements and such condition continues for a period of thirty (30) Days after written notice thereof from Gulf Power unless such cure is not capable of being effected within such thirty (30) Day



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period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursue such cure and complete such cure within sixty (60) Days. Gulf Power may seek remedies pursuant to Section 11.3 for an Event of Default caused under this Section 11.1.10; provided, however, upon termination of this Agreement, if the Seller is able to clearly demonstrate that the Event of Default was not caused by any direct or indirect action by Seller, then Seller shall have no further liability or obligation to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.11 The Ground Lease is terminated by Gulf Power due to the default or breach of the Ground Lease by Seller; or

11.1.12 Seller fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.1.1 through 11.1.11, unless Seller cures such failure within thirty (30) Days after a written demand by Gulf Power to do so and such cure removes any adverse effect on Gulf Power resulting from such failure

11.2 Default by Gulf Power. Any one or more of the following events shall constitute an Event of Default by Gulf Power and shall give Seller the right to exercise the remedies specified in Section 11.3:

11.2.1 Gulf Power fails to pay Seller any undisputed amount payable by Gulf Power to Seller pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Gulf Power fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Seller.

11.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Gulf Power in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Gulf Power bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Gulf Power under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Gulf Power or of any substantial part of its affairs.

11.2.3 Gulf Power shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Gulf Power in any involuntary case or proceeding under



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any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Gulf Power of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Gulf Power or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

11.2.4 A violation of the requirements of Section 17.1.2 through an assignment or transfer of this Agreement.

11.2.5 Any representation or warranty made by Gulf Power herein or in any certificate delivered to Seller pursuant hereto shall prove to be incorrect in any material respect when made, unless Gulf Power shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Gulf Power by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Gulf Power shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

11.2.6 The Ground Lease is terminated by Seller due to the default or breach of the Ground Lease by Gulf Power; or

11.2.7 Gulf Power fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.2.1 through 11.2.6, unless Gulf Power cures such failure within thirty (30) Days after a written demand by Seller to do so and such cure removes any adverse effect on Seller resulting from such failure.

### 11.3 Remedies for Events of Default.

11.3.1 Upon the occurrence of an Event of Default, the non-defaulting Party ("Non-Defaulting Party") shall be entitled to take one or more of the following actions in its discretion: (i) terminate this Agreement by giving written notice thereof to the defaulting Party ("Defaulting Party") setting a termination date, and recover liquidated damages from the Defaulting Party pursuant to Section 11.3.2, which liquidated damages shall be paid by the Defaulting Party to the Non-Defaulting Party within three (3) Business Days after such termination date is set by the Non-Defaulting Party; (ii) if the Event of Default is for the failure to pay an amount of money pursuant to this Agreement (including any failure by the Defaulting Party to indemnify the Non-Defaulting



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Party under Article 13), pursue an action for damages equal to the amount of money not paid, pursuant to the procedure in Article 16; (iii) with respect to Gulf Power as the Non-Defaulting Party, if the Event of Default is due to Seller's failure to provide Environmental Attributes in accordance with this Agreement or if any of the representations, warranties or covenants set forth herein with respect to Environmental Attributes are untrue or not satisfied, Gulf Power may pursue an action against Seller for damages equal to the costs and expenses associated with procuring replacement Environmental Attributes (as applicable); and/or (iv) proceed by appropriate proceedings in equity. The foregoing remedies shall be in addition to, and not in lieu of, any remedies the Parties may have under the Ground Lease or any other agreement between the Parties.

11.3.2 If the Non-Defaulting Party terminates this Agreement pursuant to Section 11.3.1, the liquidated damages required to be paid by the Defaulting Party shall be equal to: (i) if the Defaulting Party is Gulf Power, an amount equal to the Buyer Amount that applies for the period during which such termination occurs, as determined under Appendix J; or (ii) if the Defaulting Party is Seller, an amount equal to the Seller Amount that applies for the period during which such termination occurs, as determined under Appendix J, less (but only if such termination occurs after the Commercial Operation Date) the Site Remediation Amount that applies at the time of such termination (provided that in addition to the payment of such liquidated damages, Seller shall also have those liabilities and obligations set forth in Section 3.3).

11.4 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSE HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, AND IN SUCH EVENT SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES FOR WHICH INDEMNIFICATION IS PROVIDED UNDER THIS AGREEMENT. TO THE EXTENT THE DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.5 Disclaimer of Warranties. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THE TEXT HEREOF. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.



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11.6 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

### ARTICLE 12: COMPLIANCE WITH LAWS

12.1 Compliance. Seller represents, warrants and covenants that throughout the Term, Seller shall (i) be in compliance with all Legal Requirements with respect to the design, construction, ownership, operation and maintenance of the Facility, including all required Consents, and if applicable, the mitigation of environmental impacts, and (ii) pay all costs, expenses, charges and fees in connection therewith.

12.2 Approvals. Seller and Gulf Power each agree to use diligent efforts to apply for promptly and to pursue any required acceptances or approvals from Governmental Authorities for the consummation of the transactions contemplated by this Agreement or for the giving of effect to the expiration of this Agreement or any termination of this Agreement. This provision is not intended to subject this Agreement to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement as of the Effective Date.

12.3 Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur additional costs in carrying out its obligations under this Agreement, such Party agrees to pay all costs associated with such Change of Law and acknowledges that the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur a reduction in costs that are projected to decrease such Party's costs in carrying out its obligations under this Agreement, such realized savings shall be retained by such Party and the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law.

12.4 Federal Acquisitions Regulations Compliance. Gulf Power is a government contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government, and as such, is required to conduct business with entities in compliance with the regulations contained herein. Accordingly, Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995);
- (iii) 52.203-7 Anti-Kickback Procedures (JUL 1995);
- (iv) 52.219-8 Utilization of Small Business Concerns (MAY 2004);
- (v) 52.222-21 Prohibition of Segregated Facilities (FEB 1999); and
- (vi) 52.222-26 Equal Opportunity (APR 2002).



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Upon written request, Gulf Power will provide the full text of any of the above sections incorporated herein by reference. Seller warrants and represents that neither it nor any of its Affiliates, agents, contractors or subcontractors is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that Seller or any of its Affiliates, agents, contractors or subcontractors become debarred, suspended or proposed for debarment during the term of this Agreement, Seller will immediately notify Gulf Power verbally and in writing.

### ARTICLE 13: INDEMNIFICATION

13.1 Scope of Indemnity. Each Party (the "Indemnifying Party") expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, agents, officers, directors, employees, members and permitted assigns ("Indemnified Party") against all claims, liability, fines, costs or expenses imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (i) Indemnifying Party's acts and omissions in connection with its performance, or failure to perform obligations or representations and warranties under this Agreement; (ii) Indemnifying Party's activities (including prior uses of third parties) on the Indemnifying Party's respective side of the Point of Delivery; (iii) any negligence or willful misconduct of the Indemnifying Party; and (iv) in the case of Gulf Power as the Indemnifying Party, the exercise of Gulf Power's rights to access or inspect the Facility under Section 4.2.1.

13.2 Notice of Proceedings. An Indemnified Party that becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice prejudices the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

13.3 Survival; No Insurance Limitation. All provisions of this Article 13 shall survive termination of this Agreement, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination. Seller's indemnity obligations contained in this Agreement shall be independent of and shall not be limited by or limit the obligations of Seller under Article 14.



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### ARTICLE 14: INSURANCE

14.1 Insurance Required of Seller. During the Term, Seller shall acquire and maintain, at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in this Article 14.

14.2 Proof of Insurance. Gulf Power may, in its sole discretion, require Seller to deliver to Gulf Power, at any time during the Term, but at least thirty (30) Days after the Effective Date and thereafter annually on the RCOD anniversary, a certificate of insurance certifying Seller's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the state of Florida naming Seller as a named insured and Gulf Power as an additional insured.

14.3 General Terms. All insurance must be with insurers: (i) holding a Best's rating of at least A- VII or equivalent; (ii) whose financial condition and policy forms are acceptable to Company; and (iii) authorized to transact insurance in the state of Florida. Upon commencement of operation of the Facility, the required insurance coverage shall contain a broad form contractual endorsement specifically covering liabilities arising out of or caused by the operation of the Facility or by Seller's failure to maintain the Facility in satisfactory and safe operating condition. Seller's insurance must be primary for all services provided to Gulf Power. Insurance or self-insurance maintained by Gulf Power or other additional insureds is in excess of Seller's insurance, contingent and non-contributory. To the extent allowed by applicable law, Gulf Power, Southern Company and Affiliates, and each of their officers, directors, employees, representatives, and agents, as well as each other person or entity so identified in the Agreement, must be additional insured under the commercial general liability policy. To the extent allowed by applicable law, Seller waives, and must require its insurers to waive, a right of subrogation against Gulf Power, Southern Company, and its Affiliates, and each of their officers, directors, employees, representatives, and agents, for the commercial general liability policy and the workers' compensation policy.

14.4 General Liability Insurance. The insurance policy shall provide the following coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement:

- a. Commercial general liability insurance in an "occurrence" form with bodily injury and property damage combined liability limits of not less than five million dollars (\$5,000,000.00) per occurrence; provided, however, Seller may use umbrella coverage to satisfy the total five million (\$5,000,000.00) coverage requirement (e.g. combine one million dollars (\$1,000,000.00) in commercial general liability insurance as described above with four million dollars (\$4,000,000.00) in umbrella coverage).
- b. Specific coverage for broad form contractual liability including Seller's indemnification obligations under this Agreement and a separation of insured provision.



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- c. Coverage on an "occurrence" basis; provided, however, that coverage may be provided on a "claims made" basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement.

14.5 Statutory Worker's Compensation Insurance. Seller shall acquire and maintain statutory worker's compensation insurance covering Seller's legal liability under the applicable state or federal worker's compensation or occupational disease laws and employer's liability of at least five hundred thousand dollars (\$500,000.00).

14.6 Notice of Change or Cancellation. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify Gulf Power at least thirty (30) Days prior the effective date of any cancellation, with the exception of 10 days' notice for nonpayment of premium. If notice of cancellation is only commercially available to the Seller's attention, then Seller shall forward such thirty (30) Day (or 10 days for non-payment of premium) advance notice to Gulf Power immediately upon receipt. Furthermore, Seller agrees to notify Gulf Power at least thirty (30) Days prior to the effective date of any known material change in the policy.

14.7 Payment of Premiums. Seller shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the Term of this Agreement.

14.8 No Waiver of Liability. The provisions requiring Seller to acquire and maintain insurance under this Agreement shall not be construed as a waiver, restriction or limitation of any liability imposed on Seller under this Agreement, whether or not the same is covered by insurance. It is the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal and contractually assumed liability of Seller, any payments due as a result of such liability shall be made first from the proceeds of such policies.

## ARTICLE 15: FORCE MAJEURE

15.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that prevents a Party, in whole or in part, from performing any of its obligations or satisfying any conditions under this Agreement and that is beyond the reasonable control of such Party and is not caused by such Party's negligence, lack of due diligence, or failure to follow Prudent Industry Practices. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site-specific strike, walkout, lockout or other labor dispute at the Facility; (iii) equipment failure or equipment damage, in the case of the Facility only, unless such equipment failure or equipment damage results directly from an act of God; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services; (v) failures of Seller's contractors, suppliers or vendors, unless such failures are caused by an event that would otherwise constitute a Force Majeure Event if experienced directly by Seller; (vi) unavailability, variability or lack of adequate solar insolation or photovoltaic or solar rays to any extent and for any reason; (vii) Seller's inability to arrange or maintain transmission/distribution service for deliveries to the Point of Delivery; or (viii) any event, including a change in any Legal Requirement or



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accounting standard, that results in requiring Gulf Power to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's financial statements.

15.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and shall not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform such obligations is due to a Force Majeure Event.

15.3 Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

- (i) give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;
- (ii) remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section 15.3 shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (iii) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification from an independent, registered engineer that the Force Majeure Event has been cured.

15.4 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the stated Term.

### 15.5 Extended Force Majeure Event.

15.5.1 If a Party has reason to believe that a Force Majeure Event, which is preventing the other Party from performing its obligations hereunder will result in a suspension of such performance for a term of six (6) Months or longer (an "Extended Force Majeure Event") (including, in the case of a Force Majeure Event affecting Seller or the Facility, the circumstance where the capability of the Facility to generate and deliver energy is reduced as a result of a Force Majeure Event for a term of six (6) Months or longer), that Party may request that the other Party submit a "Force Majeure Remedy Plan," which the other Party shall submit to the requesting Party within thirty (30) Days of the request. If the Party claiming an excuse under this Section 15 has reason to believe that a Force Majeure Event is an Extended Force Majeure Event, it shall notify the other Party promptly and shall submit a Force Majeure Remedy Plan to the other Party within thirty (30) Days thereafter. The Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions that should permit



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the affected Party to perform its obligations under this Agreement as soon as reasonably practicable.

15.5.2 While a Force Majeure Remedy Plan is in effect, the Party prevented from performing its obligations due to the Extended Force Majeure Event shall provide Monthly status reports to the other Party notifying the other Party of the steps that have been taken to remedy the Extended Force Majeure Event and the expected remaining duration of the Party's inability to perform its obligations.

15.5.3 The Party not prevented from performing its obligations due to the Extended Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the other Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 15.5; (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to cause that Party to be able to perform its obligations hereunder; or (iii) the affected Party remains unable to perform its obligations hereunder twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section 15.5.3, the twelve (12)-Month period need not be continuous if, and only if, each period of suspension of performance comprising the twelve (12)-Month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

15.5.4 Upon termination of this Agreement as provided in this Section 15.5, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

## ARTICLE 16: DISPUTE RESOLUTION

16.1 Notice. Either Party ("Aggrieved Party") shall have the right to give notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party's belief and may describe the recommended options to correct the failure.

### 16.2 Dispute Resolution, Arbitration.

16.2.1 Except for a proceeding in equity under Section 11.3.1(iv), any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such dispute or claim to the mutual satisfaction of the



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Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then upon notice by either Party to resolve the matter by arbitration, any such dispute or claim shall be resolved in accordance with Section 16.2.2.

16.2.2 In the event a dispute is not resolved by senior executives under Section 16.2.1 and a Party provides notice to resolve the matter by arbitration, the Parties agree to arbitrate such dispute in accordance with the following procedures:

16.2.2.1 At the request of either Party upon written notice to the other Party (a "Demand"), the dispute shall be finally settled by binding arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

16.2.2.2 The arbitration shall be conducted by a panel of three (3) arbitrators selected as follows:

(i) The Party initiating arbitration shall nominate one (1) arbitrator at the same time it sends the Demand. The other Party shall nominate one (1) arbitrator within twenty (20) Days of receiving the Demand. The two (2) arbitrators ("Party-Appointed Arbitrators") shall appoint a third arbitrator ("Third Arbitrator"). The Party-Appointed Arbitrators and the Third Arbitrator shall be attorneys who are competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of experience in the electric industry, and shall be impartial and independent of either Party and the Party-Appointed Arbitrators. None of the Party-Appointed Arbitrators or Third Arbitrator shall have provided services to either Party or any of their respective Affiliates within the last five (5) years. Each Party shall pay for the expenses incurred by its Party-Appointed Arbitrator and the costs of the Third Arbitrator shall be divided equally between the Parties.

(ii) If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within thirty (30) Days from initiation of arbitration, then the Third Arbitrator shall be selected by the AAA with due regard given to the selection criteria above and input from Seller, Gulf Power and the Party-Appointed Arbitrators. Parties shall undertake to request the AAA to complete selection of the Third Arbitrator no later than ninety (90) Days from the date of the Demand. Costs charged by the AAA for this service shall be borne by the Parties equally.



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(iii) In the event the AAA should fail to select the Third Arbitrator within ninety (90) Days from the date of the Demand, then either Party may petition a court of competent jurisdiction in Florida to select the Third Arbitrator. Due regard shall be given to the selection criteria above and input from the Parties and the Party-Appointed Arbitrators.

(iv) If, prior to the conclusion of the arbitration, a Party-Appointed Arbitrator or the Third Arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

16.2.2.3 The arbitration shall be held in Pensacola, Florida and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

16.2.2.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator. The arbitrator shall be authorized in his or her discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its consent to service of process by mail is made for the express benefit of the other Party.

16.2.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

16.2.2.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 11.4, or any other multiple or enhanced damages, whether statutory or common law.

16.2.3 The Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 16.

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16.2.4 EACH PARTY UNDERSTANDS AND AGREES THAT ARBITRATION UNDER SECTION 16.2.2 IS MANDATORY AND WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR COURT PROCEEDINGS TO DETERMINE THE MATTERS UNDER SECTION 16.2.2 OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT.

### ARTICLE 17: MISCELLANEOUS

#### 17.1 Assignment, Transfers and Changes of Control.

17.1.1 Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Gulf Power and the owner of the Site (which consent shall not be unreasonably withheld, conditioned or delayed). Any proposed assignee of this Agreement shall (i) agree to assume assignor's obligations under this Agreement, the Ground Lease, the Interconnection Agreement and any other applicable agreements or permits, and (ii) deliver to Gulf Power such assurances regarding its creditworthiness and its ability to perform all obligations of Seller hereunder (including its obligation to provide and maintain Performance Security under Article 5), as Gulf Power may reasonably request, and (iii) cooperate with Gulf Power to comply with any Legal Requirements that result from such assignment. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of Seller with respect to such obligations (and any related interests so transferred), and a release and discharge by Gulf Power of Seller from, and an agreement by Gulf Power not to make any claim for payment, liability, or otherwise against Seller with respect to, such obligations from and after the effective date of the assignment; provided, however, Seller may, without the consent of Gulf Power, assign this Agreement to a financing party for collateral security purposes in connection with any financing or refinancing of the Facility; provided further, that such collateral assignment shall not place any limitation on Gulf Power's rights under this Agreement or expand the liability, risks or obligations imposed on Gulf Power under this Agreement. In connection therewith, Gulf Power agrees to execute a written consent to such collateral assignment in a form acceptable to Gulf Power should the financing party reasonably request such an assignment.

17.1.2 Gulf Power may not assign this Agreement or any portion thereof to any Person other than an Affiliate or partner of Gulf Power who is not subject to a Material Adverse Financial Condition, subject to the jurisdiction of a state regulatory commission without the prior written consent of Seller.

17.2 Other Restrictions. Seller agrees that, without the prior written consent of Gulf Power (which consent shall not be unreasonably withheld, conditioned or delayed) and the owner of the Site, there will be no (i) assignment or transfer of any interest in the Facility, (ii) Change



## EXECUTION VERSION

of Control Transaction with respect to Seller, or (iii) delegation by Seller of the operational responsibility for the Facility.

17.3 Reimbursement of Gulf Power's Costs. Seller agrees that, in the event Seller assigns or transfers an interest in the Facility or the Agreement, or undergoes a Change of Control Transaction or executes a written consent in favor of Seller's financing party, as such transactions are described in this Article 17, Seller shall be responsible for reasonable and documented costs incurred by Gulf Power, including expenses and legal fees incurred by Gulf Power to effectuate any consent to such proposed transactions, [REDACTED]

17.4 General Requirements. Neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement (including changes in accounting treatment). It shall be reasonable for either Party to condition its consent required by this Article 17 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement or the Facility, that all security required under Article 5 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Gulf Power shall have been provided prior to such disposition.

17.5 No Partnership. Seller and Gulf Power do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

17.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and permitted assigns of Seller and Gulf Power.

17.7 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Gulf Power or Seller to any Person not a party to this Agreement.

17.8 No Gulf Power Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Gulf Power (including any Affiliate of Gulf Power acting as Gulf Power's agent where Gulf Power's agent is given certain authorities pursuant hereto) shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement, provided, however, in the event of an assignment of this Agreement to an Affiliate of Gulf Power pursuant to Section 17.1.2 such assignee will be liable for the assignor's obligations arising under this Agreement from and after the date of assignment.

17.9 Time of Essence; No Waiver. Time is of the essence of this Agreement. Neither Gulf Power's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Gulf Power or Seller of any right or

## EXECUTION VERSION

remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

17.10 Amendments. This Agreement may be amended only by a written instrument duly executed by both Parties, each of which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

17.11 Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications shall be sent to the respective Parties at the following addresses:

Gulf Power Company

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0335  
Attention: Renewable Energy Manager

With a copy to:

Beggs & Lane  
501 Commendencia Street  
Pensacola, FL 32502  
Attention: Steven Griffin

and if given to Seller shall be addressed to:

Gulf Coast Solar Center II, LLC  
c/o HelioSage, LLC  
117 4<sup>th</sup> Street S.E. – Suite B  
Charlottesville, VA 22902  
Attention: Nelson S. Teague, Jr.

unless Gulf Power or Seller shall have designated a different officer or address for itself by written notice to the other.

17.12 Counterparts; Electronic Copies. This Agreement may be executed by facsimile or PDF (electronic copy) and in counterparts, all of which for all purposes will be deemed to be an original and all of which, taken together, constitutes one and the same instrument.

17.13 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.



## EXECUTION VERSION

17.14 Article and Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17.15 Governing Law: Forum for Disputes. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Florida. The Parties agree that the state and federal courts, as applicable, of the state of Florida shall have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction.

### 17.16 Confidentiality.

17.16.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that it shall not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Gulf Power's retail operating Affiliates, or Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by Legal Requirements.

17.16.2 The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from the FPSC, but acknowledge that certain terms, conditions and provisions of this Agreement may need to be disclosed in connection with Gulf Power's regulatory obligations before the FPSC. No assurance or commitment is made regarding the ability of Gulf Power to obtain confidential treatment from the FPSC. The Parties agree that in the event Confidential Information is required to be disclosed pursuant to Legal Requirements, the Disclosing Party shall make reasonable efforts to obtain protection from disclosure pursuant to the trade secret provisions applicable to such agency or court to ensure that the Confidential Information is protected from public disclosure.

17.16.3 Notwithstanding anything to the contrary in this Section 17.16, Gulf Power shall have the right to disclose the following information publicly or to any other Person without the consent of Seller: (i) all information received by Gulf Power from Seller or otherwise with respect to Environmental Attributes; (ii) the amount of energy purchased under this Agreement; (iii) the estimated Commercial Operation Date; (iv) a forecast of the Seller's energy deliveries under this Agreement; (v) the names of the parties to this Agreement and their Affiliates.



## EXECUTION VERSION

17.16.4 The terms of Section 17.16 shall survive for a period of two (2) years after the termination or expiration of this Agreement. With respect to any Confidential Information that constitutes a "trade secret" under any applicable law, the Parties' obligations under Section 17.16 shall apply for the life of such trade secret.

### 17.17 Seller Advertising; Public Statements.

17.17.1 Without limiting any other provision of this Agreement, Seller shall submit to Gulf Power all advertising, sales promotion or other publicity matter relating to this Agreement wherein Gulf Power's name or the name of its Affiliate(s) is mentioned, and Seller shall not use or publish such advertising, sales, promotion or other publicity matter without written consent of Gulf Power.

17.17.2 Except as required under any Legal Requirement, any public statement by Seller concerning the transaction described herein shall be reviewed and agreed upon by Gulf Power before release to the public, which agreement shall not be unreasonably withheld, conditioned or delayed.

17.18 Photographs. Upon request, Seller shall provide Gulf Power with photographs of the Facility and the Site for use by Gulf Power for informational purposes and for promoting awareness of the energy purchased under this Agreement.

17.19 Liability. Neither Party shall be responsible for the other Party's performance, non-performance or delay in performance under this Agreement.

17.20 Gulf Power's Agent. Wherever this Agreement requires Seller to provide information, schedules, notice or the like to, or to take direction from, Gulf Power, Seller shall provide information, schedules, notice or the like to, or receive from, Gulf Power or such agent of Gulf Power as Gulf Power may direct from time to time pursuant to a written notice given to Seller in accordance with Section 17.11.

17.21 Entire Agreement. This Agreement (including the attached Appendices) constitutes the entire understanding between the Parties with respect to the purchase and sale of Solar Energy and provision of Environmental Attributes and supersedes any previous agreements between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

17.22 Severability. In the event any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



## **EXECUTION VERSION**

17.23 Transfer of Information Acknowledgement. Seller agrees to execute contemporaneous with the execution of this Agreement, the Transfer of Information Acknowledgement attached as Appendix G, and Gulf Power agrees to the limited use and confidential treatment of such information as set forth in Appendix G.

**[The next page is the signature page.]**

**EXECUTION VERSION**

**IN WITNESS WHEREOF**, Seller and Gulf Power have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**GULF COAST SOLAR CENTER II, LLC**

"Seller"

By: Nelson S. Teague, Jr.

Title: Manager

Name: Nelson S. Teague, Jr.

**GULF POWER COMPANY**

"Gulf Power"

By: Michael L. Burroughs

Name: MICHAEL L. BURROUGHS

Title: VICE - PRESIDENT

ATTEST:

Susan D. Ritenour

Susan D. Ritenour  
Corporate Secretary



## EXECUTION VERSION

### APPENDIX A

#### SOLAR ENERGY PAYMENT CALCULATIONS

The Solar Energy payments to the Seller include Monthly Energy Payments plus an annual true-up payment or credit, determined as set forth below; provided that this Appendix A shall not apply to energy from the Facility prior to COD, which shall be governed by Section 7.2 of the Agreement.

##### 1. Determination of Monthly Energy Payments.

The Monthly Energy Payment ("MEP") shall be calculated for each Month as follows:

###### A. Determination of Monthly Energy Payments for Months Prior to 2017:

For energy delivered in each Month prior to October 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * (\text{Monthly Average AER for such Month})$$

For energy delivered in each Month of October, November or December of 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * \text{CEP}$$

###### B. Determination of Monthly Energy Payments for Months After 2016:

For energy delivered in each Month occurring after 2016, MEP shall be calculated for each such Month as follows:

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $\geq 75\%$ , then:

$$\text{MEP} = \text{CEP} * \text{MDE} * \text{EPA}$$

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $< 75\%$ , then:

$$\text{MEP} = \text{MDE} * \text{Prevailing Rate}$$

Notwithstanding the foregoing: (i) if COD occurs in Calendar Year 2016, the MEP for all Months occurring in Calendar Year 2017 shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation; and (ii) if COD occurs in a Calendar Year after 2016, the MEP for all Months of such Calendar Year in which COD occurs shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation.

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### C. Certain Definitions:

The following terms have the respective meanings set forth as follows:

**ADE** = Annual Delivered Energy which, for a given Calendar Year, is the amount of Solar Energy, in MWh, delivered by Seller to Gulf Power at the Point of Delivery plus any Deemed Delivered Energy ("DDE") during such Calendar Year pursuant to this Agreement (provided that for purposes hereof, Annual Delivered Energy shall exclude any energy delivered prior to COD, and there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**ADP** = Annual Delivery Percentage for a given Calendar Year, which shall be the ratio of the sum of the Annual Delivered Energy ("ADE") for such Calendar Year and any Curtailed Energy ("CE") for such Calendar Year to the Annual Energy Contract Amount ("AECA") for such Calendar Year, i.e.:

$$ADP = (ADE + CE) / (AECA)$$

**AECA** = Annual Energy Contract Amount for a given Calendar Year, as determined in Appendix F.

**AER** = the Avoided Energy Rate, which shall be, for any given hour, the amount (in \$/MWh) that is equal to the avoided cost of generation on the Gulf Power territorial system for such hour as such is calculated by or on behalf of Gulf Power pursuant to FPSC Rule 25-17.0825.

**CE** = Curtailed Energy which, for a given Calendar Year, shall equal the amounts of Solar Energy not delivered during such Calendar Year that specifically constitute "Curtailed Energy" pursuant to Section 7.7.1, Section 7.8 and Section 7.9.2 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Curtailed Energy attributable to any period prior to COD).

**CEP** = the Contract Energy Price for the Calendar Year in which the applicable Month of energy deliveries occurs, as set forth in Table A below:

**Table A**

**Contract Energy Price\***

Calendar Year	CEP ** (\$/MWh)
2016	
2017	



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2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			

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2042***		
2043***		
Subsequent Calendar Years (if applicable)	****	

\*Note – Prices for Calendar Years that do not occur in whole or in part during the period beginning with the Month when CEP is to be used to determine MEP through the end of the Term (as may be extended under Section 3.1.1) will not apply.

\*\*Note – The prices set forth in Table A are based on the presumption that Gulf Power will enter into a total of three (3) solar purchased power agreements with Seller or its Affiliates and that all three (3) agreements will receive regulatory approval from the FPSC. In the event that only two (2) solar purchased power agreements are approved by the FPSC, the prices set forth in Table A will increase by 1.5%. In the event that only one (1) solar purchased power agreement is approved by the FPSC, the prices set forth in Table A will increase by 2.5%.

\*\*\*Note – If applicable.

\*\*\*\* Note – If the Agreement is extended pursuant to section 3.1.1, CEP for each Calendar Year following 2043 shall be equal to CEP for the immediately previous Calendar Year multiplied by [REDACTED]

**DDE** = Deemed Delivered Energy which, for a given Calendar Year, shall be equal to the amount of Solar Energy not delivered during such Calendar Year that specifically constitutes “Deemed Delivered Energy” under Section 7.9.3 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**EPA** = The Energy Payment Adjustment shall be calculated in accordance with Table B below based on the ADP for the Calendar Year that is prior to the Calendar Year in which the Month of applicable energy deliveries occurs. Gulf Power shall apply the Energy Payment Adjustment to the Monthly Energy Payment for the duration of the current Calendar Year.



Table B

Annual Delivery Percentage for the prior Calendar Year ("ADP")	Energy Payment Adjustment ("EPA")
$ADP \geq 90\%$	■
$90\% > ADP \geq 85\%$	■
$85\% > ADP \geq 75\%$	■

**MDE** = the Monthly Delivered Energy is the amount of Solar Energy, in MWh, delivered by Seller from the Facility to Gulf Power at the Point of Delivery pursuant to this Agreement during the applicable Month plus any Deemed Delivered Energy determined under Section 7.9.3 of this Agreement for the applicable Month.

**Monthly Average AER** = for a given Month, the average hourly AER over all hours of such Month (regardless of when energy deliveries commenced or occurred under this Agreement during such Month).

**Prevailing Rate** = the lower of: (i) 70% of the prevailing CEP; or (ii) the Monthly Average AER for the applicable Month of energy deliveries.

## 2. Determination of Annual True-up Payment or Credit.

At the end of each Calendar Year, a true-up payment or credit will be calculated for such Calendar Year to true-up the total Monthly Energy Payments made to the Seller for that Calendar Year to the target payment shown in Table C below for such Calendar Year ("Target Payment"); provided, however: (i) if COD occurs in Calendar Year 2016, such calculation will not be made for 2016, but will be made commencing with Calendar Year 2017 after the end of such Calendar Year 2017; (ii) if COD occurs in a Calendar Year after 2016, such calculation will be made commencing with the Calendar Year in which COD occurred after the end of such Calendar Year; and (iii) a final true-up payment or credit will be calculated at the end of the last Annual Period in order to true-up the total payments made to the Seller for the Calendar Year in which the last Annual Period expires to the Target Payment for such Calendar Year. The true-up payment or credit for a given Calendar Year shall be equal to the Target Payment for such Calendar Year minus the sum of the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year. By way of further clarification, if the Target Payment for a Calendar Year is greater than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall receive the difference (i.e., the amount of underpayment) as a true-up payment pursuant to Section 8.1.1 of the Agreement. If the Target Payment for a Calendar Year is less than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall remit to Gulf Power a credit (i.e., the amount of overpayment) for such difference pursuant to Section 8.1.1 of the Agreement.

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Table C

Annual Delivery Percentage for the Calendar Year ("ADP")	Target Payment for the Calendar Year
$ADP \geq 110\%$	
$110\% > ADP \geq 90\%$	
$90\% > ADP \geq 85\%$	
$85\% > ADP \geq 75\%$	
$75\% > ADP \geq 0\%$	

For purposes of this Section 2, the following terms shall have the respective meanings set forth below:

**ADP** = Annual Delivery Percentage (as defined above) for the Calendar Year (or applicable portion thereof) for which the Target Payment is being determined.

**ADE** = Annual Delivered Energy (as defined above) for the Calendar Year for which the Target Payment is being determined.

**CEP** = the Contract Energy Price (as defined above) for the Calendar Year for which the Target Payment is being determined.

**Excess ADE Payment** = the Target Payment in the event the ADP is  $\geq 110\%$  of the Annual Energy Contract Amount for the Calendar Year shall reflect the sum of:

1.

2.

**Excess ADE Payment** =

**AAC** = the simple average of the hourly AERs over all hours of the Calendar Year.



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### APPENDIX B

#### FORM OF LETTER OF CREDIT

\_\_\_\_\_, 20\_\_

[Name and Address  
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME OF ACCOUNT PARTY] ("[Account Party]"), with respect to the Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Account Party] and you ("Beneficiary"), as may be amended (the "PPA"), our irrevocable standby letter of credit no. \_\_\_\_\_ (the "Standby Letter of Credit") whereby we hereby irrevocably authorize you to demand payment from us, in accordance with the terms and conditions hereinafter set forth, an amount not to exceed \_\_\_\_\_ United States Dollars (U.S. \$\_\_\_\_\_).

Funds against this Standby Letter of Credit are available to you against your written demand(s) for payment delivered to us, referring thereon to the number and date of this Standby Letter of Credit, accompanied by a written and completed certificate executed by you in the form attached as Annex 1 hereto, with appropriate insertions. Multiple, partial demands may be made hereunder. Such available funds shall not directly or indirectly constitute funds or collateral deposited with or for the bank account by the [Account Party], or pledged with or for the bank's account by the [Account Party].

Delivery of such demands and such certificates shall be made on any day which is a business day for us at or prior to 5:00 p.m. (Atlanta Time) at our office located at \_\_\_\_\_, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such demand and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) business days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by telecopy or e-mail when promptly confirmed by written demand; however, actual disbursement of funds pursuant to a demand presented by telecopy or e-mail shall not occur until we are presented with the original Standby Letter of Credit.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (Atlanta time) on \_\_\_\_\_, 20\_\_. It is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date (but in no event later than \_\_\_\_\_, 20\_\_), unless we notify you, in writing, by certified or registered mail at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for such additional period.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Payment of demands made under this Standby Letter of Credit is not subject to any condition or qualification. This Standby Letter of Credit sets forth in

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full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be affected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 2 hereto, with appropriate insertions. Upon such presentation we shall forthwith issue an irrevocable letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the International Standby Practices (herein referred to as the "ISP98"). This Standby Letter of Credit shall be deemed to be a contract made under the laws of the state of Florida and shall, as to matters not governed by the ISP98, be governed by and construed in accordance with the laws of the state of Florida.

Yours very truly,

[ISSUING BANK]



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**ANNEX 1**

**CERTIFICATE**

Re: Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Name of Account Party] (“[Account Party]”) and [Name of Beneficiary] (“[Beneficiary]”) (the “PPA”).

The undersigned, each a duly authorized officer of [Beneficiary], hereby certify to [ISSUING BANK] (the “Bank”) with reference to irrevocable standby letter of credit no. (the “Standby Letter of Credit”), issued by the Bank for the account of [Account Party] in favor of [Beneficiary] that:

(1) (Insert one of the following, as applicable)

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to demand payment under the Standby Letter of Credit in the amount of the demand accompanying this certificate (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the expiration date of the Standby Letter of Credit for an additional period past its then expiration date and the Account Party has failed to deliver a substitute letter of credit in accordance with the terms of the Agreement.

(2) The undersigned are each a duly elected and incumbent officer of [Beneficiary] and are authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of this     day of     , 20     .

[BENEFICIARY]

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

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

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

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

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**ANNEX 2**

**INSTRUCTION TO ASSIGN IN ENTIRETY**

\_\_\_\_\_, 20\_\_

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

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

(Name of Assignee)

(Address)

all rights of the undersigned beneficiary to demand payment under the above Standby Letter of Credit in its entirety.

By this assignment, all rights of the undersigned beneficiary in such Standby Letter of Credit are transferred to the assignee and the assignee shall hereafter have the sole rights as beneficiary thereof.

The Standby Letter of Credit is returned herewith and in accordance therewith we ask you to issue a new irrevocable Standby Letter of Credit in favor of the assignee with provisions consistent with the Standby Letter of Credit.

Very truly yours

[Beneficiary]

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

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

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

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



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### APPENDIX C

#### FORM OF GUARANTY

THIS GUARANTY AGREEMENT (the "Guaranty"), dated and effective as of \_\_\_\_\_, 20\_\_, is made and entered into by \_\_\_\_\_ (the "Guarantor") in favor of the \_\_\_\_\_ (the "Beneficiary").

**WHEREAS** Beneficiary and \_\_\_\_\_ (the "Company"), [a subsidiary of the Guarantor], have entered into that certain Energy Purchase Agreement dated as of \_\_\_\_\_, 20\_\_, as may be amended (the "Agreement");

**WHEREAS**, the Beneficiary has required, as an inducement to enter into the Agreement, that Guarantor deliver to the Beneficiary this Guaranty or other Performance Security when required under the Agreement;

**WHEREAS**, the Guarantor qualifies as a Seller Guarantor under the Agreement and this Guaranty qualifies as Performance Security under the Agreement; and

**WHEREAS**, the Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Agreement.

**WHEREAS**, for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

#### ARTICLE 1:DEFINITIONS

1.1 Definitions. Unless otherwise defined in this Guaranty, capitalized terms have the meanings specified or referred to in the Agreement.

#### ARTICLE 2:GUARANTY

2.1 Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment and performance of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty shall in no event exceed the amount of Performance Security required to be provided by Seller from time to time pursuant to Section 5.1 of the Agreement. If Company fails to pay or perform any Guaranteed Obligation, then Guarantor will immediately pay for or perform or cause the performance of such obligation upon demand by the Beneficiary.

2.2 Guaranty Absolute. (1) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Agreement, regardless of any law or regulation now or hereafter in effect in any

## EXECUTION VERSION

jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and performance and not of collection. The obligations of the Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

a. any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations;

b. any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries;

c. any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;

d. any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);

e. any failure of the Beneficiary to commence an action against Company;

f. any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations; or

g. except as provided in Section 2.3(c), any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.



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(2) No action which the Beneficiary shall take or fail to take in connection with the Guaranteed Obligations, or any security for the payment or performance of any of the Guaranteed Obligations, nor any course of dealing with Company or any other person, shall release Guarantor's obligations hereunder, affect this Guaranty in any way, or afford Guarantor any recourse against the Beneficiary.

(3) In the case of an Event of Default under the Agreement or with regard to any of the Guaranteed Obligations, Guarantor hereby consents and agrees that the Beneficiary shall have the right to enforce its rights, powers, and remedies thereunder or hereunder or under any other instrument now or hereafter evidencing, securing, or otherwise relating to the Guaranteed Obligations, and apply any payments or credits received by the Company or Guarantor or realized from any security, in any manner and in any order as the Beneficiary, in its sole discretion, shall see fit, and all rights, powers, and remedies available to the Beneficiary in such event shall be nonexclusive and cumulative of all other rights, powers, and remedies provided thereunder or hereunder or by law or in equity. If the Guaranteed Obligations are partially paid by reason of the election of the Beneficiary, its successors or assigns, to pursue any of the remedies available to the Beneficiary, or if such indebtedness is otherwise partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the Guaranteed Obligations even though any rights which Guarantor may have against the Company may be destroyed or diminished by the exercise of any such remedy.

### 2.3 *Waivers and Acknowledgments.*

(a) Guarantor hereby waives promptness, diligence, presentment, demand of payment, acceptance, notice of acceptance, protest, notice of dishonor and any other notices with respect to any of the Guaranteed Obligations and this Guaranty.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. The provisions of this Guaranty shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Agreement.

(1) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder; provided, however, that Guarantor shall have the same defenses available to the Company with respect to any payment obligations arising under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company.

19.4 *Subrogation.* Notwithstanding any payment or payments or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without



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limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly paid or performed in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations shall not have been indefeasibly paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

### ARTICLE 3: REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

3.1 *Organization.* The Guarantor is a [ ] duly organized, validly existing and in good standing under the laws of the state of [ ].

3.2 *Authorization; No Conflict.* The execution and delivery by the Guarantor of this Guaranty, and the performance by the Guarantor of its obligations hereunder (i) are within the Guarantor's [ ] powers, (ii) have been duly authorized by all necessary [ ] action, (iii) do not contravene its [ ] or any law or regulation applicable to or binding on the Guarantor or any of its properties and (iv) do not require the consent or approval of any person which has not already been obtained or the satisfaction or waiver of any conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

3.3 *Enforceability.* This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, dissolution, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3.4 *No Bankruptcy Proceedings.* There are no bankruptcy proceedings pending or being contemplated by Guarantor or, to its knowledge, threatened against it.

3.5 *No Legal Proceedings.* There are no legal proceedings that would be reasonably likely to materially adversely affect Guarantor's ability to perform this Guaranty.

### ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until all of the Guaranty



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Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

4.2 *Notices.* All notices, requests, demands and other communications which are required or may be given under this Guaranty shall be in writing and shall be deemed to have been duly given when actually received if (a) personally delivered; (b) transmitted by facsimile, electronic or digital transmission method; or (c) if sent by certified or registered mail, return receipt requested. In each case notice shall be sent:

- (i) if to the Beneficiary:

[Company, address, c/o person]

- (ii) if to the Guarantor:

[Company, address, c/o person]

or to such other place and with such other copies as the Beneficiary or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4.2. Delivery by facsimile of an executed counterpart of a signature page to any amendment or waiver of any provision of this Guaranty shall be effective as delivery of an original executed counterpart thereof.

4.3 *Delay and Waiver.* No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or

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occasioned by any breach by the Guarantor of any of its obligations under this Guaranty should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

4.6 *Headings.* The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

4.7 *Governing Law; Consent to Jurisdiction.* (1) This Guaranty shall be construed and interpreted, and the rights of the parties determined, in accordance with the law of the state of [Florida], without giving effect to principles of conflicts of law that would require the application of the laws of another jurisdiction.

(2) Each party hereto irrevocably and unconditionally (i) agrees that the exclusive jurisdiction for any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the United States District Court for the Northern District of Florida, or if jurisdiction is not available in the United States District Court for the Northern District of Florida, in the Circuit Court in Pensacola, Florida; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection which such party may have to the laying of venue of any such suit, action or proceeding in any such court.

(3) THE GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO, THIS GUARANTY, OR THE ACTIONS OF THE BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

4.8 *Severability.* Any provision of this Guaranty that shall be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.



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

**[Company]**

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

Name:

Title:

## APPENDIX D

### CERTIFICATION OF WHETHER THE AGREEMENT WILL REQUIRE DECONSOLIDATION BY SELLER WITH RESPECT TO VARIABLE INTEREST ENTITY

**AGREEMENT** – Energy Purchase Agreement dated October \_\_, 2014 between Gulf Power Company (“Gulf Power”), and Gulf Coast Solar Center II, LLC (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that the Agreement WILL ( )/WILL NOT ( X ) require the Seller, based on U.S. Generally Accepting Accounting Procedures in effect as of the date of this certificate, to deconsolidate on its books and records any assets, liabilities, cash flow, profits or losses of Seller as a result of the Gulf Power being determined to be the primary beneficiary. My determination of the most likely accounting treatment of this transaction results from my personal consideration after necessary discussions with relevant officers of Accounting Standards Codification (“ASC”) Topic 810, Consolidation, and the following factual matters:

- 1) Seller’s accounting policies, procedures, and internal controls are sufficient to provide us with an appropriate basis for confirming the information contained herein.

X Yes

           No (please explain)

*Explain:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2) Seller qualifies for one of the scope exceptions listed in paragraphs 810-10-15-12 and 810-10-15-17 of ASC Topic 810. Please explain.

           Yes

X No

*Explain:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- 3) Seller is financed with equity equal to or greater than ten percent (10%) of the Seller's total assets per paragraphs 810-10-25-45 to 47 of ASC Topic 810.

☒ Yes

☐ No

- 4) The Agreement revenues correlate with fluctuations in Seller's operating cash flows (operating expenses). Please explain.

☐ Yes

☒ No

Explain: On an annual basis, both revenues and O&M expenses are expected to be predictable and relatively steady throughout the life of the power purchase agreement; however, they do not necessarily correlate. For example, in the event of unexpected system maintenance that would require temporary system downtime and would also require exceptional O&M expense, the correlation between O&M expense and revenue from Gulf Power would be inverted during such a time (higher expenses and lower revenues).

- 5) The Agreement reduces variability in the fair value of Seller's assets, for example by absorbing fuel or electricity price risk. Please explain.

☒ Yes

☐ No

Explain: The Power Purchase Agreement provides the Seller with assurance that the power produced by this asset will be sold to Gulf Power at a predictable rate for the term of the PPA. This substantially reduces the variability of the asset value during the life of the PPA due to the predictability of the pricing as outlined in the PPA.

- 6) The Agreement term is for greater than 50% of the remaining economic life of the unit.

☒ Yes

☐ No

- 7) The Agreement is for substantially all of the proposed Seller's productive output.

☒ Yes

☐ No

8) Gulf Power and/or its affiliates participated significantly in the design or redesign of the Seller's Facility.

           Yes

  X   No

9) The percentage that the Facility's fair value represents, of the fair value of the proposed Seller's total assets, is approximately;

100%

10) The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

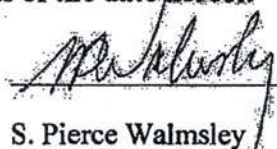
  X   Yes

           No

#### Confirmation

The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.

By:

  
\_\_\_\_\_

Name: S. Pierce Walmsley

Title: CFO

Company: HelioSage, LLC

Date: October 27, 2014



APPENDIX E

FACILITY DESCRIPTION AND SITE

The land and rights-of-way and related equipment and facilities of the 40 MW Facility known as Holley Field Solar Center will be located on approximately 460 acres at Navy Outlying Landing Field (NOLF) Holley in Santa Rosa County. [REDACTED]

The Facility shall include a switching station located on Seller's side of the Point of Change in Ownership ("Project Switching Station"). Seller shall design, engineer, procure, construct and install the Project Switching Station in accordance with the following:

- (1) Seller shall design, engineer, procure, construct and install the Project Switching Station using standards and specifications provided in advance by Gulf Power (including EMF requirements, standards to meet hurricane wind loading conditions, and all NESC standards);
- (2) Seller's design, engineering, procurement, construction and installation of the Project Switching Station shall comply with all requirements of law;
- (3) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of the design, engineering, procurement, construction and installation of the Project Switching Station (including prior approval of materials used for insulators, transformers, poles and other equipment), including all changes in scope;
- (4) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of all of Seller's contractors and suppliers with respect to the Project Switching Station;
- (5) Prior to commencement of construction, Seller shall provide to Gulf Power a schedule for construction of such facilities, and shall promptly respond to requests for information from Gulf Power;
- (6) At any time during construction, Gulf Power shall have the right to conduct inspections of such facilities;
- (7) At any time during construction, should any phase of the design, engineering, procurement, construction or installation of the Project Switching Station not meet the standards and specifications provided by Gulf Power, Seller shall be obligated to remedy deficiencies in the relevant portion of such facilities;
- (8) Seller shall indemnify Gulf Power for claims against Gulf Power arising from the design, engineering, procurement, construction and installation of the Project Switching Station;

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(9) As a condition to the operation of the Project Switching Station, Gulf Power shall approve and accept for operation and maintenance such switching station;

(10) Seller shall deliver to Gulf Power "as-built" drawings (in Gulf Power's standard format), information, and any other documents that are reasonably required by Gulf Power to assure that such facilities are built to the standards and specifications required by Gulf Power.



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### APPENDIX F

#### ANNUAL ENERGY CONTRACT AMOUNT

The Annual Energy Contract Amount for each Calendar Year shall be determined as set forth in this Appendix F.

**1. If COD Occurs in Calendar Year 2016.**

If COD occurs in Calendar Year 2016, then the following shall apply:

- (i) There shall be no Annual Energy Contract Amount for 2016.
- (ii) The Annual Energy Contract Amount for Calendar Year 2017 shall be [REDACTED] MWh.
- (iii) For each Calendar Year after 2017, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED])$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED]) * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment})$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

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Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

### 2. If COD Occurs in Calendar Year 2017 or a Subsequent Calendar Year.

If COD occurs in Calendar Year 2017 or a subsequent Calendar Year, then the following shall apply:

- (i) The Annual Energy Contract Amount for such Calendar Year in which COD occurs shall be determined as follows:

$$AECA = \text{[REDACTED]} \text{ MWh} * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment}).$$

Where:

Pro Rata Monthly  
Adjustment =

the percentage in Table F-3 below that corresponds to the Month that commences immediately after the Month in which COD occurs; provided that if COD occurs in December, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which COD occurs; multiplied by (ii) the ratio of the number of Days in such Month that occur on and after COD in such Month to the total number of Days in such Month.

- (ii) For the Calendar Year immediately following the Calendar Year in which COD occurs, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{[REDACTED]} \text{ MWh} * (1 - \text{COD Year Adjustment}).$$



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Where:

COD Year Adjustment = Post COD Months \* [REDACTED]

Post COD Months = The number of Months occurring after COD but prior to the first January 1 occurring after COD (excluding the Month in which COD occurs).

For example, if COD occurs on June 15, 2017, the Annual Energy Contract Amount for 2018 shall be equal to [REDACTED] \* (1 - 6 \* [REDACTED]).

- (iii) For each subsequent Calendar Year, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED])

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED]) \* (Pro Rata Monthly Adjustment + Pro Rata Daily Adjustment)

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

## EXECUTION VERSION

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

**Table F-1**

Month	Percentage	
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		

**Table F-2**

Month	Percentage	
January		
February		
March		



**EXECUTION VERSION**

April		
May		
June		
July		
August		
September		
October		
November		
December		

**Table F-3**

<b>Month</b>	<b>Percentage</b>
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

## EXECUTION VERSION

### APPENDIX G

#### TRANSFER OF INFORMATION ACKNOWLEDGEMENT

Gulf Coast Solar Center II, LLC ("Seller") and Gulf Power Company ("Gulf Power") have entered into that certain Energy Purchase Agreement between Seller and Gulf Power Company ("Agreement") dated as of \_\_\_\_\_, 2014. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission's Standards of Conduct will be provided by Seller to Gulf Power and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Gulf Power Company, Georgia Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf Power Company's system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and energy affiliate/wholesale marketing unit functions under the Standards of Conduct.

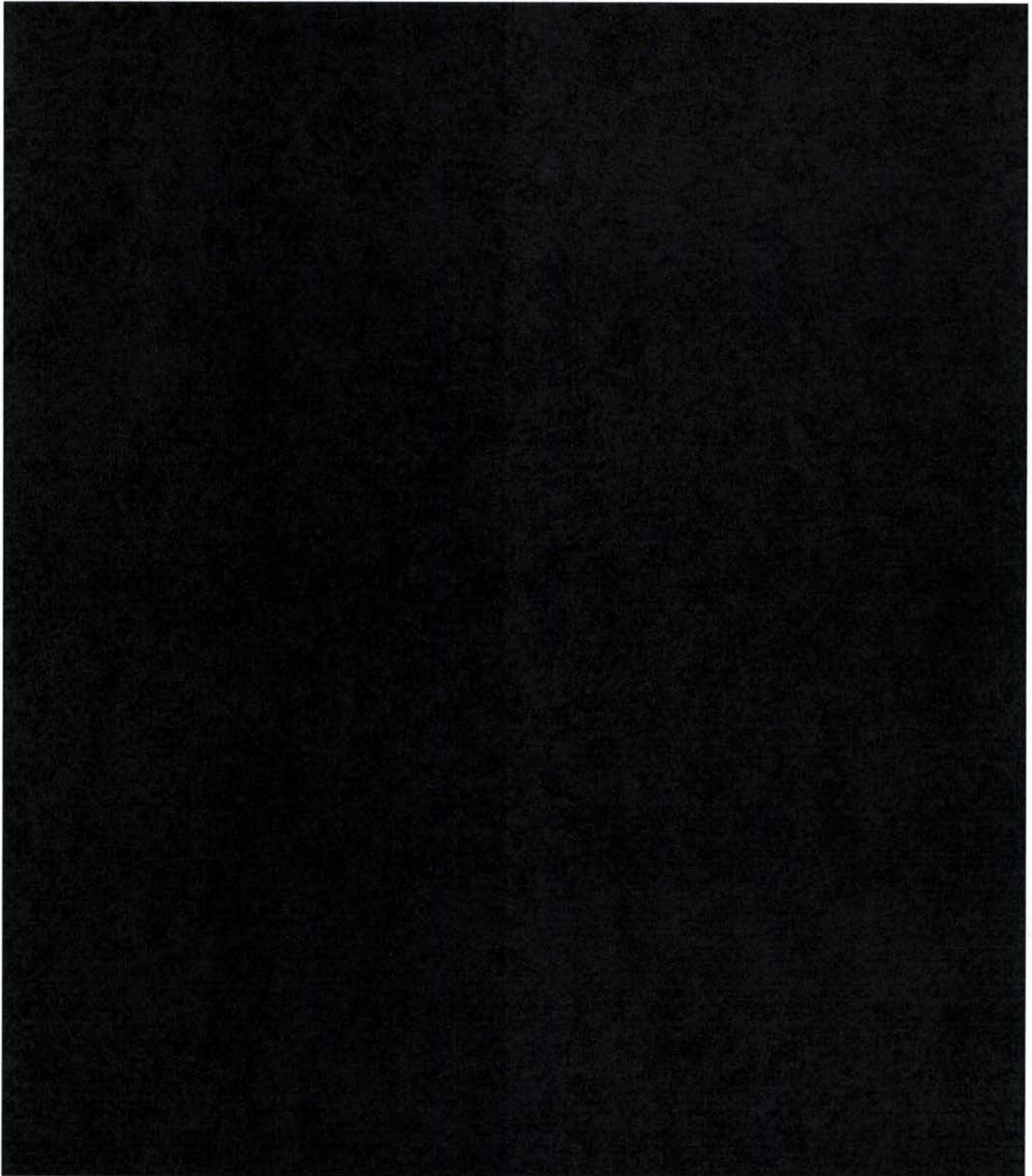
The individuals within the Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Gulf Power's system operations and dispatch functions). Seller understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission's Standards of Conduct. Seller's provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of Southern Company. Seller also acknowledges that Seller is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of Seller's consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be energy affiliates/wholesale marketing units under the Standards of Conduct.

Acknowledged on behalf of Seller:

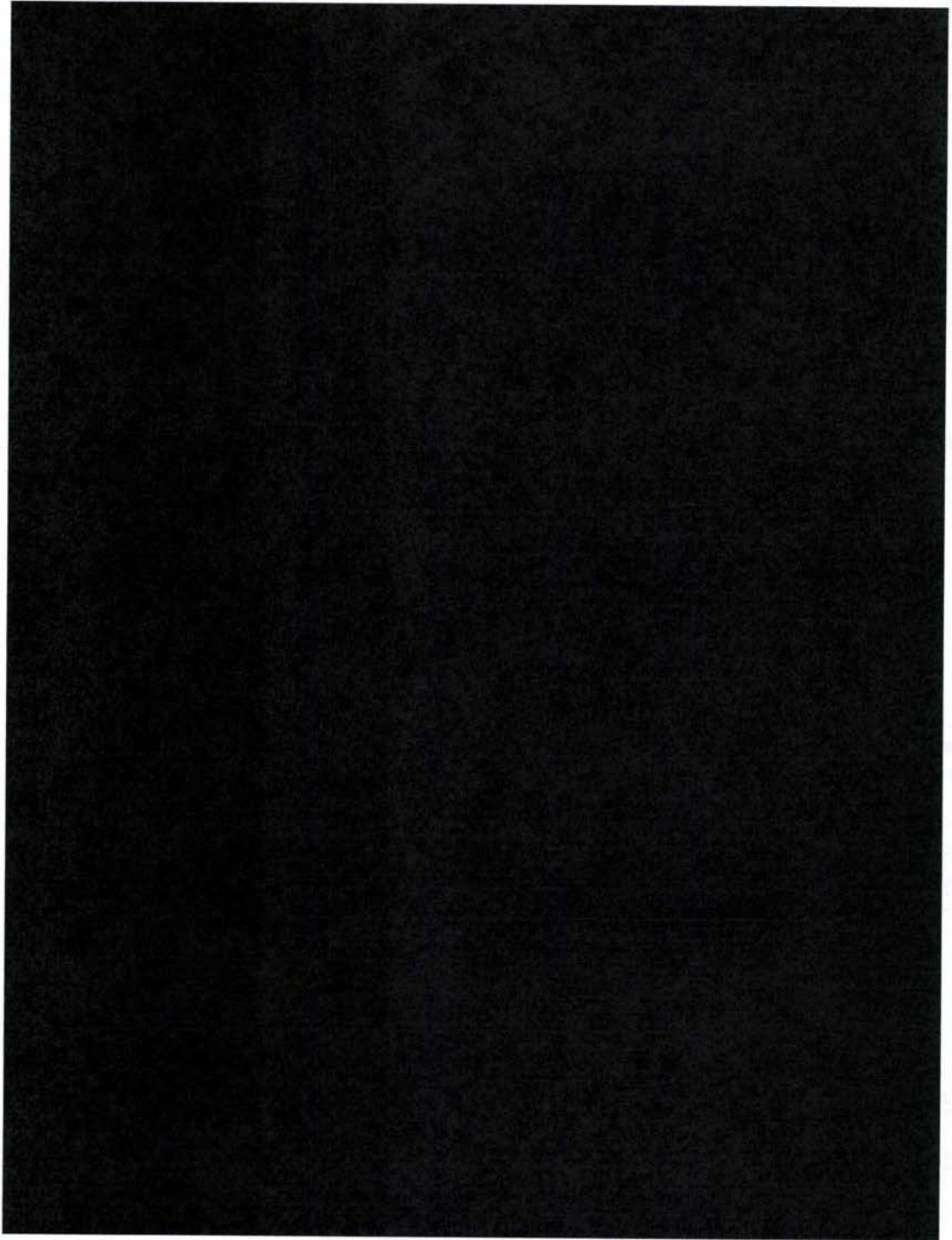
By: Nelson S. Teague, Jr.  
Name: Nelson S. Teague, Jr.  
Date: 11/07/14



**APPENDIX H**  
**INTERCONNECTION REQUIREMENTS**



**EXECUTION VERSION**





## EXECUTION VERSION

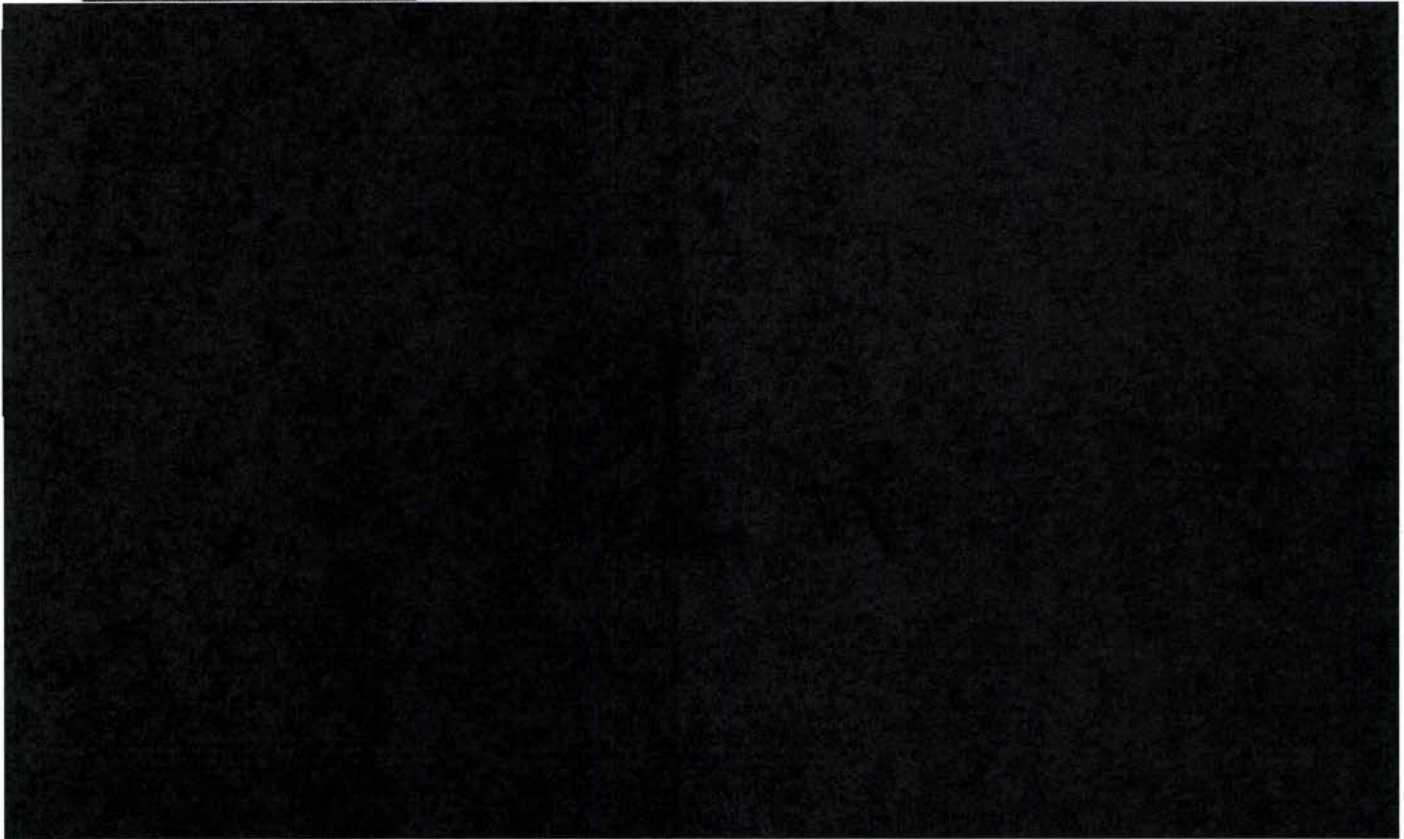


### Qualifying Facility Status

Throughout the Term of this Agreement and the term of the Interconnection Agreement, Seller shall cause the Facility to be a Qualifying Facility. Seller shall obtain, and maintain at all times during the Term of this Agreement and the term of the Interconnection Agreement, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities. For purposes hereof, "Qualifying Facility" has the meaning defined in Section 292.101(b)(1) of the regulations promulgated under PURPA, 18 C.F.R. Part 292.

## EXECUTION VERSION

### Interconnection Diagram\*



\*Final interconnection diagram may be modified by Gulf Power in order to reflect the results of the interconnection studies and process under Article 6.



APPENDIX I

SALE AND PURCHASE OF THE FACILITY

1. Determination of Fair Market Value and Due Diligence:

In order for Gulf Power to make a determination of whether to exercise its option to purchase the Facility, from time to time, Gulf Power shall have the right to conduct due diligence with respect to the Facility and/or require the Parties to [REDACTED] (as defined in Section 6 below).

At Gulf Power's request to conduct due diligence, Seller shall provide Gulf Power and its Representatives with all such information relating to the Facility and access to the Facility as requested by Gulf Power, including: (i) all agreements that relate to the construction, procurement, ownership, operation or maintenance of the Facility; (ii) all information regarding maintenance and outages of the Facility; (iii) all information regarding claims made against Seller with respect to the Facility or the Facility; (iv) all information regarding claims made by Seller with respect to the Facility; (v) all manufacturers' and suppliers' guidelines and recommendations relating to the Facility; (vi) all operating and maintenance logs and records, insurance claims and any other records relating to the construction, procurement, operation and maintenance of the Facility; (vii) all information relating to Consents that pertain to the Facility; and (viii) all drawings, instructions, manuals, guidelines and similar items with respect to the Facility. If Gulf Power requires [REDACTED] at any time(s) [REDACTED] that would apply if Gulf Power were to thereafter exercise its option to purchase the Facility, as defined in Section 6 of this Appendix I. There shall not be a limit on the number of times that Gulf Power [REDACTED]

2. Exercise of Option:

After conducting due diligence on the Facility and after [REDACTED] [REDACTED] if Gulf Power desires to exercise its option to purchase the Facility, Gulf Power shall provide notice to Seller of such exercise. After Gulf Power exercises the option, Gulf Power shall be entitled to continue to conduct due diligence with respect to the Facility, and Seller shall continue to provide Gulf Power with all information and access with respect to the Facility, consistent with Section 1 of this Appendix I.

3. Purchase and Sale:

If Gulf Power provides notice to Seller exercising its option to purchase the Facility, the Parties shall execute a bill of sale and assignment and any other necessary documents in accordance with this Appendix I, which shall provide for the transfer and sale of the Assets (as defined below) to Gulf Power on a date mutually agreed upon by the Parties. Such bill of sale, assignment and other

## EXECUTION VERSION

documents shall include terms, conditions, representations and warranties that are customary for similar transactions and consistent with the following provisions of this Appendix I.

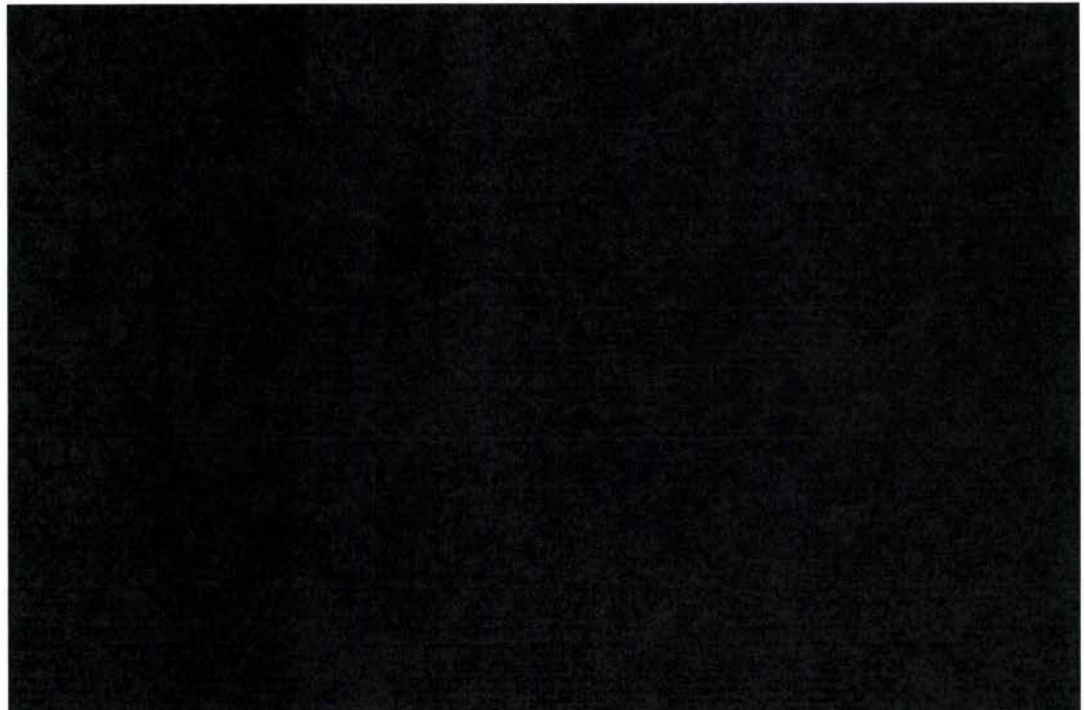
4. Structure of Transaction:

The transaction shall be structured as an acquisition of assets, not of ownership interests or shares in any entity. Gulf Power shall acquire: (i) the Facility, including all equipment, components, materials, machinery, and apparatus thereof; (ii) all other assets and property (whether real or otherwise) of Seller necessary or desirable to own, control and operate the Facility; (iii) to the extent permitted by Legal Requirements and subject to any required consents and approvals, all Consents necessary or desirable to own, control and operate the Facility; and (iv) to the extent requested by Gulf Power, all agreements to which Seller is a party relating to the assets to be acquired and which are necessary or desirable to own, control and operate the Facility (including this Agreement and the Ground Lease); provided that Seller shall ensure that all such agreements can be transferred to Gulf Power without further consents or approvals ("Assets").

5. Retention of Liabilities by Seller:

Seller shall be responsible for all liabilities and obligations relating to the Assets that arise due to any event or occurrence prior to the date of transfer of the Assets or that relate to or arise out of the ownership or operation of the Assets up to the date of transfer.

6. Purchase Price:





## EXECUTION VERSION



7. Liens and Encumbrances:

All Assets shall be transferred to Gulf Power free and clear of all liabilities, obligations, liens, claims and other encumbrances as evidenced, to Gulf Power's satisfaction, through written releases or other necessary documents.

8. Asset Warranties:

Seller shall cause all warranties and guarantees with respect to the Assets to be subrogated, assigned or otherwise made available to Gulf Power (provided that Seller shall ensure that all warranties relating to the Assets shall be assignable to Gulf Power without further consents or approvals). Seller shall also provide to Gulf Power all documentation that would be required for making a warranty claim (including purchase receipts, warranty certificates, installation documentation, etc.).

9. Closing Conditions:

The closing of the sale and transfer shall be subject to conditions that are customary for similar transactions and this Appendix I, including receipt of all requisite governmental approvals and, as requested by Gulf Power, approval by regulatory authorities to which Gulf Power is subject, the non-existence of a material adverse effect with respect to the Assets, and the non-existence of adverse changes in law or legal requirements.

10. Costs and Expenses:

Each Party shall be responsible for its own costs and expenses (including legal fees) in connection with the transfer of Assets hereunder.

## EXECUTION VERSION

### APPENDIX J

#### DETERMINATION OF SELLER AMOUNT AND BUYER AMOUNT

**A. Determination of Seller Amount.**

Except as set forth in that certain Right of First Refusal Agreement between Gulf Power, Seller, and HelioSage, LLC entered into contemporaneously with this Agreement, the Seller Amount shall be equal to the following amounts for the applicable periods, as set forth in the table below.

Applicable Period	Seller Amount
Effective Date through February 28, 2015.	[REDACTED]
March 1, 2015 until the Day on which Seller commences initial construction activities at the Site.	[REDACTED]
The Day on which Seller commences initial construction activities at the Site until the Day before the Commercial Operation Date.	[REDACTED] adjusted on January 1 of each Calendar Year after the Effective Date by CPI
On and after the Commercial Operation Date	*As determined below.

\* For all periods on and after the Commercial Operation Date, the Seller Amount shall be determined as set forth in the remaining provisions of this Section A.

By the Day that is ten (10) Days prior to the anticipated Commercial Operation Date, Gulf Power shall determine the Seller Amount that applies commencing on the Commercial Operation Date and for the remainder of the Calendar Year in which the Commercial Operation Date occurs. For each Calendar Year thereafter occurring during the Term (or partially occurring during the Term), Gulf Power shall determine the Seller Amount that shall apply for such Calendar Year (or applicable portion thereof). Gulf Power shall make such determinations pursuant to the remaining provisions of this Section A; provided that the failure to determine such amounts by such dates shall not constitute a failure to perform under the Agreement or





**EXECUTION VERSION**

[REDACTED]

[REDACTED]

**B. Determination of Buyer Amount.**

The Buyer Amount for a given Calendar Year shall be the amount that is equal to the greater of: (i) the Minimum Amount for such Calendar Year, as determined in Section C of this Appendix J; or (ii) the Adjusted Buyer Amount for such Calendar Year, as determined pursuant this Section B below.

For purposes hereof, the Adjusted Buyer Amount for a given Calendar Year shall be determined as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**EXECUTION VERSION**

[REDACTED]

[REDACTED]

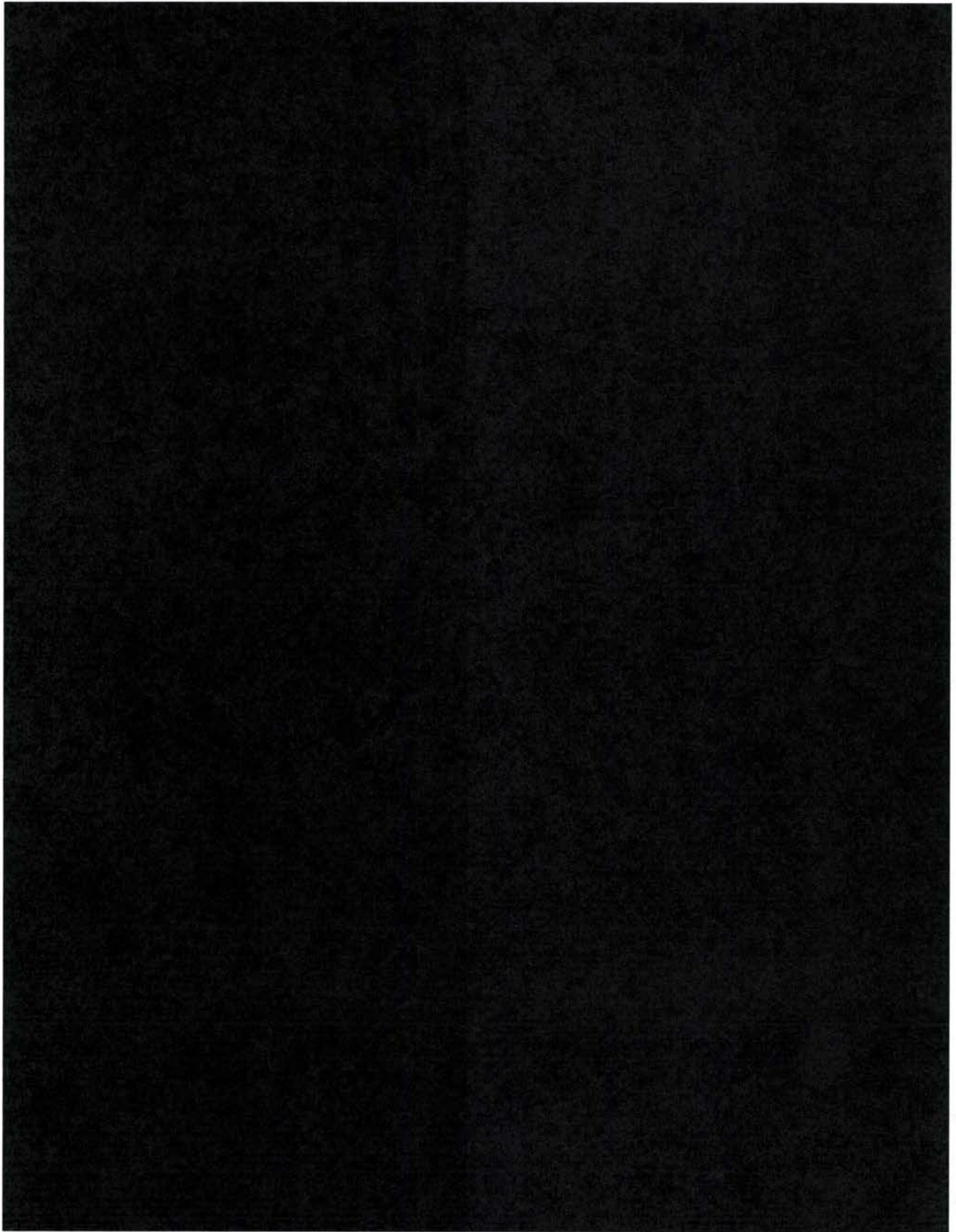
[REDACTED]

**C. Certain Definitions.**

The following terms shall have the respective meanings set forth below for purposes of this Appendix J:

[REDACTED]

[REDACTED]





**EXECUTION VERSION**

Calendar Year	Minimum Amount (in \$/kW)
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038 and all applicable subsequent Calendar Years	

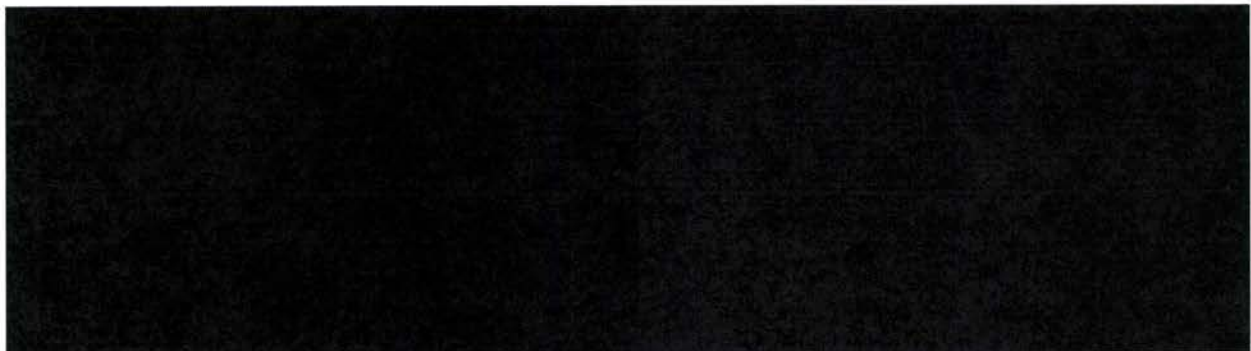
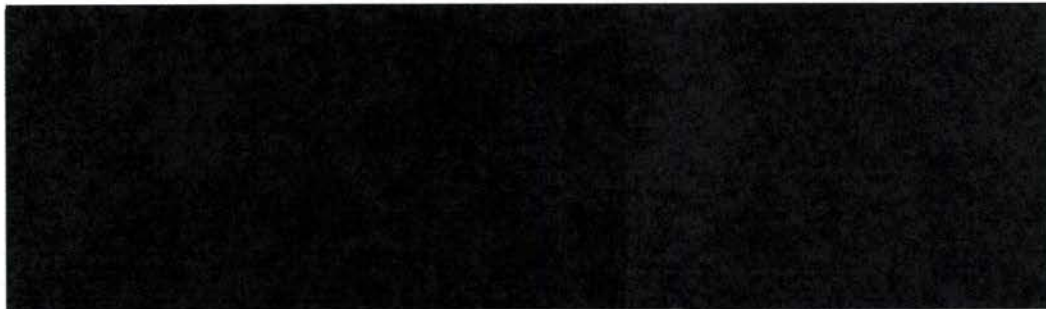


## EXECUTION VERSION



### A. Example Calculations of Seller Amount.

Example calculations of the Seller Amount are set forth in Example J-1, Example J-2, and Example J-3 below. These are only examples of the calculations described in this Appendix J and are not intended to, and shall not, modify any of the terms of this Appendix J or this Agreement. To the extent that there is a conflict between such examples and the other terms of this Appendix J or this Agreement, such other terms of this Appendix J and this Agreement shall govern. Actual amounts of the Seller Amount will vary from those set forth in the examples.





## EXECUTION VERSION

**Table J-1\***A black and white photograph of a large, empty, rectangular room. The walls and floor are covered in a grid pattern, likely from a window blind or a floor tile. The room is divided into sections by vertical lines. There are several small, dark, rectangular objects on the floor, possibly trash or debris. The lighting is bright, creating strong shadows.

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-1 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.

## EXECUTION VERSION

**Table J-2\***[illegible]



## **EXECUTION VERSION**

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-2 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.

# **Exhibit C**

## **Energy Purchase Agreement**

### **Between**

**Gulf Power Company and**

**Gulf Coast Solar Center III, LLC**



**EXECUTION VERSION**

**ENERGY PURCHASE AGREEMENT**

**Between**

**GULF COAST SOLAR CENTER III, LLC**

**and**

**GULF POWER COMPANY**

**Dated as of November 7, 2014**

## EXECUTION VERSION

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## EXECUTION VERSION

### ENERGY PURCHASE AGREEMENT

This Energy Purchase Agreement ("Agreement") is entered into this 7th day of November, 2014 ("Effective Date"), by and between **GULF COAST SOLAR CENTER III, LLC**, a Florida limited liability company ("Seller"), and **GULF POWER COMPANY**, a corporation organized and existing under the laws of the state of Florida ("Gulf Power"). Seller and Gulf Power may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

#### WITNESSETH:

**WHEREAS**, Seller is planning to construct, own, and operate a solar electric generation facility on land for which Gulf Power may acquire the right to construct, own and operate such a facility;

**WHEREAS**, Seller desires to sell, and Gulf Power desires to purchase, the energy to be generated by said generation facility, subject to the terms and conditions of this Agreement;

**WHEREAS**, in connection with such sale and purchase of the energy, the Parties also desire for Seller to provide to Gulf Power all Environmental Attributes and Electrical Products (as such terms are defined herein) associated with said energy; and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which the sale of electric energy, and the provision of Electrical Products and Environmental Attributes, shall be conducted between the Parties.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Gulf Power and Seller, each intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used herein and not otherwise defined, shall have the respective meanings set forth below.

"AAC" has the meaning set forth in Appendix A.

"Adjustment Period" has the meaning set forth in Section 6.2.3.

"Affiliate(s)" means for any specific entity, any other entity directly or indirectly controlling or controlled by or under common control with such specified entity. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of an entity has "control" of such entity; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.



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**"Aggrieved Party"** has the meaning set forth in Section 16.1.

**"AIER"** means the Associated Interchange Energy Rate as defined in the IIC, including any successor term.

**"Annual Delivered Energy" or "ADE"** has the meaning set forth in Appendix A.

**"Annual Delivery Percentage" or "ADP"** has the meaning set forth in Appendix A.

**"Annual Energy Contract Amount" or "AECA"** has the meaning set forth in Section 7.1 and Appendix F.

**"Annual Period(s)"** means any one of a succession of consecutive three hundred sixty five (365) Day periods (or a three hundred sixty six (366) Day period in the case of a leap year), the first of which shall begin on the Commercial Operation Date.

**"ASC"** means the FASB Accounting Standards Codification.

**"Avoided Energy Rate" or "AER"** has the meaning set forth in Appendix A.

**"Below Investment Grade Rating"** means, with respect to any Person, that: (i) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa3 (or future equivalent) by Moody's; or (ii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB- (or future equivalent) by S&P; or (iii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB- (or future equivalent) by Fitch; or (iv) neither such Person nor its senior unsecured long-term debt not supported by third party credit enhancements, as applicable, is rated by at least two of Moody's, S&P and Fitch.

**"Billing Dispute Notice"** has the meaning set forth in Section 9.2.2.

**"Business Day(s)"** means any Day excluding Saturday and Sunday and excluding any Day on which banking institutions in Pensacola, Florida are closed because of a federal holiday.

**"Buyer Amount"** means the amount determined by Gulf Power to be the "Buyer Amount" for the applicable period of time under Appendix J, as may be modified from time to time.

**"Calendar Year"** means a calendar year comprised of the Months of January through December.

**"Cash Security"** means cash security, free and clear of any adverse lien or interest, provided pursuant to a pledge agreement and a control agreement, each in form and substance acceptable to Gulf Power.

**"Change of Control Transaction"** in respect of a Person means any transaction or series of related transactions which, if consummated, would result in such Person being an Affiliate of

## EXECUTION VERSION

another ultimate parent entity immediately after such transaction. For purposes of this definition, a Person's ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person's outstanding capital stock or other equity interests having ordinary voting power and which does not itself have an ultimate parent entity.

**"Change of Law"** means any change to a Legal Requirement, including changes to laws or regulations regulating or imposing a tax, fee or other charge on discharges, emissions, effluents or disposals from the Facility.

**"Commercial Operation"** has the meaning set forth in Section 2.5.

**"Commercial Operation Date"** or **"COD"** means the date on which the Facility achieves Commercial Operation.

**"Confidential Information"** means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development, or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the "Disclosing Party," the other Party being the "Receiving Party"). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party's possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party's knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; or (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information.

**"Consent(s)"** means any approval, consent, authorization or other applicable requirement with respect to the Facility from any Governmental Authority, including all applicable environmental certificates, licenses, permits and approvals.

**"Contract Energy Price"** or **"CEP"** has the meaning set forth in Appendix A.

**"Curtailed Energy"** or **"CE"** has the meaning set forth in Appendix A.

**"Day"** means a calendar day.

**"Daylight Period"** means the period of time during each Day that commences at sixty (60) minutes prior to the time of sunrise on such Day, and ends sixty (60) minutes after the time of sunset on such Day with the time of "sunrise" and "sunset" determined for Pensacola, Florida for such Day by the National Weather Service.

**"Deemed Delivered Energy"** or **"DDE"** has the meaning set forth in Section 7.9.3 and Appendix A.

**"Defaulting Party"** has the meaning set forth in Section 11.3.



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**“Demand”** has the meaning set forth in Section 16.2.2.1.

**“Dispute Review Notice”** has the meaning set forth in Section 9.2.3.

**“Effective Date”** means the date of execution of this Agreement.

**“Electrical Products”** means all electrical products produced by or related to the Facility, including spinning reserves, operating reserves, balancing energy, regulation service, reactive power and voltage control, frequency control and other ancillary service products, or any similar benefit Gulf Power otherwise would have realized from or related to the Facility if Gulf Power rather than Seller had constructed, owned or operated the Facility, it being the Parties' intent that all such benefits and entitlements in addition to electrical output that flow to the owner or operator of the Facility belong to Gulf Power at no additional cost to Gulf Power. Electrical Products shall not include any tax benefits, including local, state or federal tax benefits that arise from the construction, ownership or operation of the Facility.

**“Electric System”** means collectively, the entire network of electric generating, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by Gulf Power or its Affiliates for the purposes of generating, transmitting and receiving electric energy.

**“Emergency”** means a condition or situation on the Electric System, including voltage abnormalities, that, in the reasonable judgment of Gulf Power, adversely affects or is reasonably likely to adversely affect: (i) public health, life or property; (ii) Gulf Power's employees, agents or property; (iii) Gulf Power's or any of its Affiliates' ability to safely and reliably operate the Electric System; (iv) the integrity of the Electric System or any electric system connected thereto; or (v) Gulf Power's ability to maintain safe, adequate and continuous service to its customers and the customers of any member of NERC.

**“Energy Payment Adjustment”** or **“EPA”** has the meaning set forth in Appendix A.

**“Environmental Attributes”** means any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits), howsoever entitled and whether known or unknown, whether existing as of the Effective Date or in the future, and whether or not such Environmental Attributes have been certified or verified under any renewable standards or otherwise that arise or result from the generation of Solar Energy. Environmental Attributes include any such Environmental Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel.



## EXECUTION VERSION

Environmental Attributes include the exclusive right to report such Environmental Attributes to any Governmental Authority or other Person. Environmental Attributes do not include: (a) any state or federal production tax credits associated with the Facility; (b) any investment tax credits and any other tax credits associated with the Facility; (c) Grants in Lieu of investment tax credits or any similar financial payment or grant with respect to the Facility or the metered electric energy output thereof; or (d) the metered electric energy produced by the Facility.

**"Extended Force Majeure Event"** has the meaning set forth in Section 15.5.1.

**"Event(s) of Default"** has the meanings set forth in Section 11.1 for Seller and Section 11.2 for Gulf Power.

**"Excess ADE Payment"** has the meaning set forth in Appendix A.

**"Facility"** means all panels and related equipment and facilities of the solar photovoltaic electric generating plant described in Appendix E to be or being constructed by Seller on the Site with a nameplate electric generating capability equal to the Planned Capacity Amount. The Facility shall include the panels and all auxiliary equipment and facilities installed at the Site necessary or used for the extraction or collection of fuel, or the production, control, delivery or monitoring of Solar Energy by the panels. All equipment and facilities installed on Seller's side of the Point of Change in Ownership shall be considered a part of the Facility.

**"Fair Market Value"** has the meaning set forth in Section 6 of Appendix I.

**"FASB"** means the Financial Accounting Standards Board.

**"FERC"** means the Federal Energy Regulatory Commission, or any Governmental Authority succeeding to the powers and functions thereof.

**"Fitch"** means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"Force Majeure Event"** has the meaning set forth in Section 15.1.

**"Force Majeure Remedy Plan"** means the plan submitted to a Party pursuant to Section 15.5 in the event of an Extended Force Majeure Event.

**"FPSC"** means the Florida Public Service Commission.

**"FPSC Approval Target Date"** has the meaning set forth in Section 3.4.3.

**"FPSC Denial"** has the meaning set forth in Section 3.4.3.

**"FPSC"** means the Florida Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.



## EXECUTION VERSION

**"GAAP"** means generally accepted accounting principles in the United States, as modified from time to time.

**"Governmental Authority" or "Governmental Authorities"** means any federal, state or local governmental or regulatory authority, administrative agency, commission, department, board or court that has jurisdiction over either of the Parties to this Agreement or the subject matter of this Agreement, when referenced in this Agreement.

**"Green-e Energy"** means the Green-e certification and verification program for renewable energy, greenhouse gas emission reductions and other Environmental Attributes that is administered by the Center for Resource Solutions, and any successor(s) thereto.

**"Green-e National Standard"** means the Green-e National Standard as determined, published, codified and otherwise promulgated by Green-e and that defines eligibility criteria for Green-e certified renewable energy products, including renewable energy certificates, utility green pricing programs, and competitive market electricity products, as such standard(s) may be modified from time to time.

**"Ground Lease"** means that certain Ground Lease to be executed and delivered by the Parties that provides Seller the right to develop, construct, own and operate the Facility on the Site.

**"Gulf Power"** means Gulf Power Company and its permitted successors and assigns.

**"IIC"** means the "Southern Company System Intercompany Interchange Contract" as filed pursuant to 119 FERC ¶ 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138, as may be amended from time to time, or any successor contract thereto among Gulf Power and certain of its Affiliates.

**"Indemnified Party"** has the meaning set forth in Section 13.1.

**"Indemnifying Party"** has the meaning set forth in Section 13.1.

**"Interconnection Agreement"** means that certain Interconnection Agreement by and between Seller and the Transmission Provider containing terms and conditions governing the interconnection and parallel operation of the Facility with the Electric System.

**"Interconnection Cost Threshold"** means [REDACTED]

**"Interest Rate"** means the interest per annum equal to the prime rate as published in The Wall Street Journal or comparable successor publication under "Money Rates," as applied on a daily basis and compounded quarterly.

**"Interconnection Requirements"** means the requirements set forth in Appendix H.

**"Investment Tax Credit Deadline"** means the expiration date of the federal investment tax credit for eligible solar energy property available under 26 USC §48, which, as of the Effective Date is December 31, 2016, as such date may be extended by subsequent legislation.

## EXECUTION VERSION

**"kW"** means kilowatt alternating current.

**"Legal Requirement(s)"** means any law, code, statute, regulation, rule, ordinance, permit, judgment, injunction, order or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

**"Letter of Credit"** means a letter of credit in the form of Appendix B hereto, or otherwise acceptable to Gulf Power, in an available undrawn amount of not less than the Required Seller Post Amount, which is in full force and effect and is not within ninety (90) Days of terminating or expiring, issued by a major U.S. commercial bank or a U.S. branch office of a major foreign bank who has and maintains assets of at least \$25 billion and at all times having a senior unsecured rating of at least "A2" (or future equivalent) by Moody's and at least "A" (or future equivalent) by S&P.

**"Material Adverse Change"** means, with respect to a Person, any event, occurrence or circumstance whereby the maturity of any indebtedness of such Person which in the aggregate exceeds an amount equal to \$50,000,000.00 or three percent (3%) of the equity in such Person that is owned by the shareholders of such Person, whichever is less, is accelerated by the holder or holders thereof as a result of a default thereunder.

**"Material Adverse Financial Condition"** means, with respect to a Person, any circumstance, event or condition whereby: (i) such Person has or commences to have a Below Investment Grade Rating; or (ii) there exists or commences to exist a Material Adverse Change with respect to such Person.

**"Metering System"** means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is being made available or delivered to Gulf Power at the Point of Delivery.

**"Minimum Energy Contract Amount"** means, for a given Calendar Year, [REDACTED]  
[REDACTED] of the Annual Energy Contract Amount for such Calendar Year.

**"Minimum Investment Grade Condition"** means, with respect to any Person, any circumstance, event or condition whereby: (i) a Material Adverse Financial Condition does not exist with respect to such Person; and (ii) (a) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of Baa3 (or future equivalent) by Moody's; (b) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating of BBB- (or future equivalent) by S&P; or (c) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of BBB- (or future equivalent) by Fitch.

**"Month(s)"** means a calendar month, commencing at the beginning of the first Day of such calendar month.

**"Monthly"** has a meaning correlative to that of Month.



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**"Monthly Delivered Energy"** or **"MDE"** has the meaning set forth in Appendix A.

**"Monthly Energy Payment(s)"** means the Monthly amount to be paid by Gulf Power to Seller for Gulf Power's purchase of Solar Energy from the Facility as calculated in accordance with Appendix A.

**"Moody's"** means Moody's Investors Service, Inc. or its successor. If Moody's ceases to exist or publish ratings, Moody's shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"MW"** means megawatt alternating current.

**"MWh"** means megawatt-hour alternating current.

**"National Weather Service"** means the National Weather Service, a component of NOAA, or successor thereto.

**"NERC"** means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

**"Network Resource"** has the meaning set forth in the Southern OATT, including any successor term.

**"Net Worth"** means, with respect to any Person, the dollar value calculated by subtracting total liabilities from total assets (excluding goodwill and other intangible assets described in ASC 350 (formerly FASB Statement 142)) of such Person as such terms are determined in accordance with GAAP, as such may be modified from time to time.

**"Non-Defaulting Party"** has the meaning set forth in Section 11.3.

**"NOAA"** means the National Oceanic and Atmospheric Administration, or successor thereto.

**"Noticed Party"** has the meaning set forth in Section 16.1.

**"Operating Committee"** means the committee established pursuant to Section 4.7.

**"Operating Procedures"** means those procedures developed by the Parties pursuant to Section 4.1.1.

**"Operating Representatives"** means those individuals appointed by each of the Parties to form and maintain the Operating Procedures.

**"Party"** or **"Parties"** means either Gulf Power or Seller or both.

**"Party-Appointed Arbitrator(s)"** has the meaning set forth in Section 16.2.2.2.

## EXECUTION VERSION

**"Performance Security"** means Cash Security, a Letter of Credit or a Seller Guaranty; provided, however, at least fifty percent (50%) of any Performance Security required to be provided by Seller under this Agreement must be in the form of either a Letter of Credit or Cash Security whenever Seller is providing a Seller Guaranty and: (i) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa2 (or future equivalent) by Moody's; (ii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB (or future equivalent) by S&P; or (iii) the applicable Seller Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB (or future equivalent) by Fitch.

**"Person"** means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Planned Capacity Amount"** means fifty (50) MW (AC or alternating current).

**"Point of Change in Ownership"** has the meaning set forth in Appendix H.

**"Point of Delivery"** means the point where Seller shall deliver Solar Energy from the Facility to Gulf Power pursuant to this Agreement, which point shall be the Point of Interconnection.

**"Point of Interconnection"** means the point at which the Facility is interconnected to the Electric System at the new 230 kV substation to be constructed under the Interconnection Agreement, as defined in the Interconnection Agreement with the Transmission Provider and as illustrated in the diagram set forth in Appendix H.

**"Prevailing Rate"** has the meaning set forth in Appendix A.

**"Primary Beneficiary"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Prudent Industry Practices"** means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric industry in the United States (as the same pertain to solar electric generation facilities) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the United States having due regard for, among other things, manufacturers' warranties and applicable Legal Requirements.

**"PURPA"** means the Public Utility Regulatory Policies Act of 1978, as such act may be amended from time to time.



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**"Renewable Energy Credits"** means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy generated at the Facility that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective.

**"Required Commercial Operation Date"** or **"RCOD"** means 11:59 pm Central Prevailing Time on February 28, 2017, or such later date as may be extended pursuant to the provisions of Section 2.6.4 or Section 6.1.4.

**"Required Seller Post Amount"** means: (i) for any time period during which there exists a Minimum Investment Grade Condition with respect to Seller, an amount that is equal to fifty percent (50%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J; and (ii) for any time period during which there exists a Material Adverse Financial Condition with respect to Seller, an amount that is equal to one hundred percent (100%) of the Seller Amount for the applicable period in which such time period occurs as determined under Appendix J.

**"Rules"** has the meaning set forth in Section 16.2.2.1.

**"S&P"** means Standard & Poor's Financial Services LLC, or its successor. If S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

**"Scheduled Outage(s)"** has the meaning set forth in Section 4.4.

**"Security Posting Condition"** means an occurrence, non-occurrence, circumstance or event whereby there exists or commences to exist, with respect to Seller, a Material Adverse Financial Condition or a Minimum Investment Grade Condition.

**"Seller"** means Gulf Coast Solar Center III, LLC and its permitted successors and assigns.

**"Seller Amount"** means the amount determined by Gulf Power to be the "Seller Amount" for the applicable period of time under Appendix J, as may be modified from time to time.

**"Seller Guarantor"** means an entity that guarantees Seller's obligations under this Agreement, including through a Seller Guaranty.

**"Seller Guaranty"** means a continuing guaranty in the form of Appendix C hereto, or otherwise acceptable to Gulf Power, which is properly completed and executed and in full force and effect and with respect to which the Seller Guarantor has not given any notice of termination, cancellation or revocation, issued by a Person: (i) who is a direct or indirect parent of Seller, unless otherwise agreed by the other Party in its sole discretion; (ii) with respect to whom there does not exist a Material Adverse Financial Condition at any time such guaranty is intended to constitute Performance Security; and (iii) has a Net Worth of at least five hundred

## EXECUTION VERSION

million dollars (\$500,000,000) for the entire period during which such guaranty is intended to constitute Performance Security.

**"Seller Installed Facilities"** has the meaning set forth in Appendix H.

**"Seller Radial Facilities"** has the meaning set forth in Appendix H.

**"Site"** means the site on which the Facility shall be constructed, operated and maintained, as set forth in Appendix E.

**"Site Remediation Amount"** has the meaning set forth in Section A of Appendix J.

**"Solar Energy"** means the electricity, including all the associated Electrical Products, produced by the Facility by converting sunlight into energy using photovoltaic cells, excluding electric energy produced in connection with testing, start-up or commissioning of the Facility.

**"Southern Companies"** means, collectively, the electric utility operating companies of The Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company).

**"Southern OATT"** means the Open Access Transmission Tariff of the Southern Companies that own or operate transmission systems (which, as of the Effective Date, include Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company), as filed and maintained in accordance with the requirement of FERC, as well as any successor tariff or agreement.

**"Station Service"** means energy that is used to serve the electrical requirements of the Facility, and includes the step-up transformer losses and line losses between the Facility and the Point of Delivery.

**"Target Payment"** has the meaning set forth in Appendix A.

**"Term"** has the meaning set forth in Section 3.1.

**"Third Arbitrator"** has the meaning set forth in Section 16.2.2.2.

**"Transmission Provider Installed Facilities"** has the meaning set forth in Appendix H.

**"Transmission Provider"** means the owner or operator of the transmission system responsible for providing transmission interconnection service to the Electric System.

**"Transmission Curtailment Event"** means a condition or situation whereby the Transmission Service is curtailed, interrupted, or unavailable consistent with Section 33 of the Southern OATT or the transmission loading relief procedures of NERC referenced in Attachment P to the Southern OATT (including any successor provisions or procedures thereto). For purposes of this definition, a Transmission Curtailment Event shall include any such curtailment, interruption or unavailability of Transmission Service that affects the ability of Gulf



## EXECUTION VERSION

Power to receive energy at the Point of Delivery or that affects the ability of Gulf Power to deliver energy from the Point of Delivery to Gulf Power's load.

**"Transmission Service"** means the network transmission service that Gulf Power requests and obtains, by designating the Facility as a Network Resource under Section 7.6.1, in order to deliver energy from the Point of Delivery to its customers.

**"Variable Interest"** or **"VI"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

**"Variable Interest Entity"** or **"VIE"** has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

### 1.2 Interpretation.

1.2.1 This Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

1.2.2 In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

1.2.3 Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

1.2.4 Any reference in this Agreement to "Section," "Article," "Appendix," or "Schedule" shall be references to this Agreement unless otherwise stated, and all such Schedules and Appendices shall be incorporated in this Agreement by reference.

1.2.5 In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties, which successor or alternate index or publication shall reflect information that is the same (or as similar as possible) as the information that was previously published in the prior applicable index or publication.

1.2.6 Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time.

## EXECUTION VERSION

1.2.7 Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

1.2.8 Whenever the term "consent" or "approval" is used herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed by the consenting or approving Party, unless the Agreement provides such consent or approval is in the sole and absolute discretion of the consenting Party.

### ARTICLE 2: FACILITY DESIGN AND CONSTRUCTION

2.1 Facility. The Facility consists of the solar powered electric generation facilities with a total nameplate electric generating capability equal to the Planned Capacity Amount, as further described in Appendix E.

2.2 Consents. Seller hereby agrees to seek to obtain, at its sole expense, any and all Consents that Seller is required to obtain for the development, construction, operation, maintenance, testing and any necessary modification of the Facility. Gulf Power will support and cooperate with, and not oppose, obstruct or otherwise interfere in any means with the efforts of Seller or its Affiliates to obtain all Consents that are the responsibility of Seller hereunder.

2.3 Inspections. Upon reasonable prior advance notice to Seller, representatives of Gulf Power shall be entitled to inspect the construction, maintenance, operation and testing of the Facility. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Gulf Power provided that: (i) such inspections shall not materially interfere with the testing or operations of the Facility, and (ii) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety. Gulf Power's review and inspection of the Facility shall not be construed as endorsing the design or construction thereof or as any warranty of the safety, durability or reliability of the Facility.

2.4 [Reserved].

2.5 Design and Construction of the Facility. Seller shall cause the Facility to be designed, engineered, constructed, installed, tested and commissioned in accordance with: (i) Prudent Industry Practices and all applicable Legal Requirements; and (ii) the specifications and requirements set forth under the Facility description in Appendix E. Seller shall use diligent efforts to achieve Commercial Operation of the Facility on or before the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date") and to otherwise carry out its obligations under this Agreement. The Facility shall be deemed to have achieved "Commercial Operation" upon fulfillment of all of the following criteria: (i) Seller shall demonstrate the completion of the construction and installation of solar photovoltaic modules and inverters and all other equipment and facilities comprising the Facility, representing a total completed and installed nameplate electric generating capacity equal to the



## EXECUTION VERSION

Planned Capacity Amount; (ii) Seller shall demonstrate that the Facility is capable of producing Solar Energy and delivering such Solar Energy to the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iii) Gulf Power is able to receive such Solar Energy at the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; (iv) Seller shall have provided Gulf Power a certificate reasonably acceptable to Gulf Power, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and the terms of this Agreement; and (v) Seller shall have delivered to Gulf Power a certificate from a responsible officer of Seller certifying that Seller is in compliance with the Interconnection Agreement and Seller has obtained all applicable Consents required under Legal Requirements to be obtained by Seller at the time of Commercial Operation of the Facility for the construction, ownership, operation and maintenance of the Facility in accordance with this Agreement.

### 2.6 Failure to Achieve Required Commercial Operation Date.

2.6.1 In the event that the Facility does not achieve Commercial Operation by the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"), Seller shall pay Gulf Power an amount of liquidated damages equal to [REDACTED] for each Day after the Required Commercial Operation Date that the Facility does not achieve Commercial Operation ("Daily LDs"). Such liquidated damages shall be paid to Gulf Power within three (3) Business Days after Seller receives an invoice from Gulf Power for the same. Seller shall pay such liquidated damages to Gulf Power for each Day until the earlier of: (i) the Commercial Operation Date; (ii) the Day that Seller notifies Gulf Power that Commercial Operation will not be achieved; or (iii) the Day that Gulf Power terminates this Agreement pursuant to Section 2.6.2.

2.6.2 If the Facility does not achieve Commercial Operation within two hundred seventy (270) Days after the Required Commercial Operation Date (as may be extended under the definition of "Required Commercial Operation Date"), then Gulf Power shall be entitled to terminate this Agreement at any time thereafter by providing notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved.

2.6.3 If Seller notifies Gulf Power under Section 2.6.1(ii) that Commercial Operation will not be achieved, or if Gulf Power provides notice to Seller terminating this Agreement under Section 2.6.2, this Agreement shall immediately terminate and the following shall apply (in addition to other applicable provisions of this Agreement):

(i) Seller shall, within three (3) Business Days, pay to Gulf Power liquidated damages in an amount equal to: (i) if commencement of initial construction activities at the Site have not begun, [REDACTED] (in addition to any Daily LDs that are required to be paid); or (ii) if commencement of initial construction activities at the Site have begun, [REDACTED]

## EXECUTION VERSION

[REDACTED] (in addition to any Daily LDs that are required to be paid); and

(ii) Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.4 Seller shall be entitled to extend the Required Commercial Operation Date on a Day-for-Day basis up to the period of any delay in achieving Commercial Operation that is caused by a Force Majeure Event. In the event that Seller extends the Required Commercial Operation Date under this Section 2.6.4 by more than three hundred sixty five (365) Days, Gulf Power shall be entitled to terminate this Agreement at any time thereafter upon written notice to Seller; provided, however, that Gulf Power shall not be entitled to provide such notice after Commercial Operation is achieved. If Gulf Power provides notice to Seller terminating this Agreement under this Section 2.6.4, this Agreement shall immediately terminate. Upon such termination, neither Party shall have any further obligation or liability under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.6.5 Gulf Power may draw upon the Performance Security to recover any amounts required to be paid by Seller under this Section 2.6, and Seller will be required to periodically replenish such Performance Security in accordance with Article 5.

2.6.6 In no event shall Seller have the right to receive a Monthly Energy Payment for any energy delivered prior to the Commercial Operation Date. Notwithstanding the foregoing, Seller may sell Solar Energy during testing of the Facility pursuant to Section 7.2.

## ARTICLE 3: TERM; PURCHASE OPTION; CONDITIONS; REGULATORY

### 3.1 Term.

3.1.1 Subject to the early termination provisions set forth herein, this Agreement shall become effective on the Effective Date and shall remain in full force and effect until the end of the twenty fifth (25th) Annual Period ("Term"); provided, however, that if the Parties mutually agree in writing (as determined by each Party in its sole and absolute discretion), the Term shall be extended for up to two additional periods of five (5) Annual Periods each (for up to a total of ten (10) additional Annual Periods); provided further, that if the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to this Section 3.1.1, for the period of the extension, the Contract Energy Price shall adjust as set forth in Appendix A, and the values set forth in Table J-1, Table J-2



## EXECUTION VERSION

and the table for "Minimum Amount" in Appendix J shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.

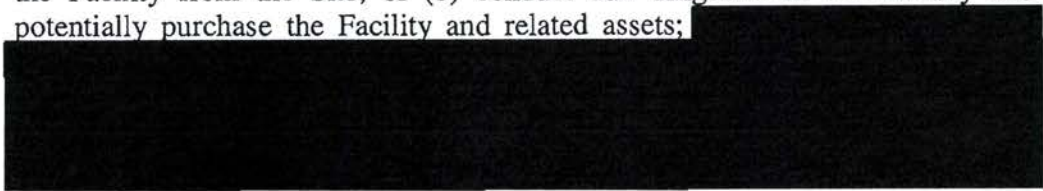
3.1.2 In the event that the Ground Lease terminates for any reason, then this Agreement shall also terminate at the time of termination of the Ground Lease (subject to any other rights that Gulf Power or Seller may have under this Agreement and the Ground Lease, including under Article 11 of this Agreement).

3.1.3 Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations that shall survive termination or expiration: (i) the obligation to pay each other all amounts accrued or then owed and not paid under this Agreement; and (ii) all obligations that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement, including such obligations that must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.2 Purchase Option During the Term. Throughout the Term, Gulf Power shall have the option to purchase the Facility and certain other property in accordance with Appendix I; provided, however, unless this Agreement terminates and Section 3.3 applies, in no event shall any such purchase be consummated prior to the end of the fifth (5th) Annual Period. In order for Gulf Power to make a determination of whether to exercise such option to purchase the Facility, Gulf Power shall have the right to conduct due diligence with respect to the Facility as set forth in Appendix I. Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.2, which Gulf Power may record to give public notice of such rights.

3.3 Purchase Option and Removal of the Facility After Termination. Upon the expiration of the Term, or if this Agreement terminates at any time prior to the expiration of the Term for any reason (including under Section 2.6 or Article 11), the following provisions and obligations and rights of the Parties shall survive such expiration or termination:

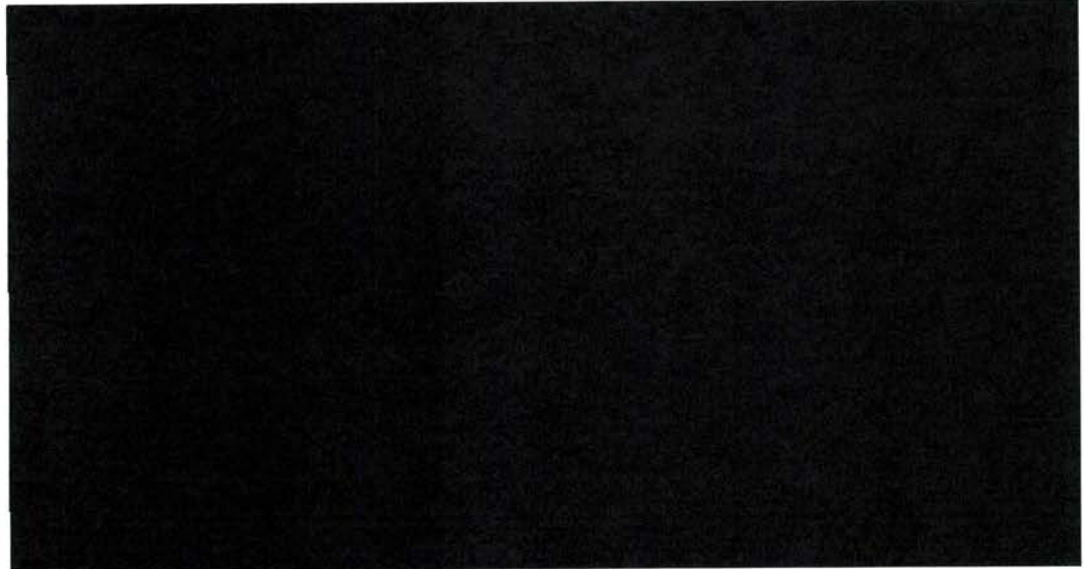
3.3.1 Within thirty (30) Days after such expiration or termination, Gulf Power shall elect by notice to Seller to either: (a) require Seller to remove the Facility from the Site; or (b) conduct due diligence on the Facility and potentially purchase the Facility and related assets;



3.3.2 If Gulf Power elects to require Seller to remove the Facility from the Site, then within one hundred twenty (120) Days after such election is made, Seller shall at its sole cost and expense remove all facilities, equipment, components and parts of the Facility, and all interconnection facilities that are then owned by Seller, and restore the Site to as nearly as practicable the condition

## EXECUTION VERSION

it was in prior to Seller's commencement of activities on the Site, consistent with the provisions of the Ground Lease. In the event that Seller does not fully comply with the foregoing obligation, then Seller shall be liable to Gulf Power for, and shall pay to Gulf Power on demand, all costs and expenses incurred by Gulf Power in connection with the removal of all facilities (including interconnection facilities), equipment, components and parts of the Facility and restoration of the Site to such condition.



3.3.4 Upon request by Gulf Power, Seller shall, at no cost to Seller, promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights in respect of the Facility and other property under this Section 3.3, which Gulf Power may record to give public notice of such rights.

### 3.4 FPSC Approval.

3.4.1 Notwithstanding any other provision of this Agreement, in no event shall Gulf Power have any obligation to receive or purchase Solar Energy under this Agreement unless: (i) the FPSC approves this Agreement through the issuance of a final, non-appealable order without qualifications or conditions; or (ii) Gulf Power fails to exercise its right to terminate this Agreement pursuant to Section 3.4.3 and, as a result, Gulf Power is deemed to have waived its right to terminate this Agreement pursuant to Section 3.4.3.

3.4.2 Gulf Power shall use its reasonable efforts to obtain FPSC approval of this Agreement and in furtherance thereof, shall file a petition for approval as soon as reasonably practicable after the execution of the Agreement, and diligently pursue such FPSC approval. Seller agrees to assist and support Gulf Power, in a timely manner and to the extent reasonably requested by Gulf Power, in obtaining FPSC approval.



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3.4.3 If, after one hundred eighty (180) Days from the filing date by Gulf Power of a petition with the FPSC for approval of this Agreement ("FPSC Approval Target Date"), the FPSC has not approved this Agreement through the issuance of a final, non-appealable order without qualifications or conditions, or if the FPSC issues an order denying Gulf Power's petition for approval of the Agreement ("FPSC Denial") prior to the FPSC Approval Target Date, then Gulf Power may terminate this Agreement without liability or obligation upon written notice to Seller; provided, however, that such notice is delivered to Seller no later than thirty (30) Days after the first to occur of the FPSC Approval Target Date or the date of the FPSC Denial. If Gulf Power fails to exercise the aforementioned termination right within such thirty (30) Day period, then Gulf Power shall be deemed to have waived such termination right. Each Party agrees that it will not oppose, protest or contest the petition with the FPSC for approval of this Agreement. Once the final, non-appealable order approving this Agreement has been issued and is deemed accepted by Gulf Power, the Parties agree they will not seek to amend, oppose, protest or contest such FPSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such FPSC order.

3.4.4 If, at any time after having approved this Agreement, the FPSC issues an order with respect to this Agreement that prohibits Gulf Power from recovering from its customers some or all of the payments required to be made by Gulf Power to Seller under this Agreement ("Disallowance Order"), then Gulf Power shall be entitled to terminate this Agreement without liability or obligation upon written notice to Seller, provided that such written notice must be delivered to Seller no later than thirty (30) Days after the issuance of the Disallowance Order. In connection with the foregoing, Gulf Power and Seller agree to support and defend this Agreement and their respective rights to cost recovery and payment, against any challenge thereto by any Person.

### 3.5 Execution of Property Agreements.

3.5.1 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), Gulf Power and the owner of the Site have not entered into an agreement, with terms and conditions satisfactory to the Parties in their sole and absolute discretion, that: (i) provides Gulf Power, its Affiliates and/or partners the right to develop, construct, own and operate a solar generation facility on their own behalf on the Site; and (ii) provides Seller the right to develop, construct, own and operate the Facility on the Site pursuant to this Agreement, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the full execution of such an agreement; provided further, that Gulf Power shall notify Seller (by written, electronic or oral notice) after such an agreement has been fully executed. If a Party terminates this Agreement under this Section 3.5.1, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue



## EXECUTION VERSION

prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

3.5.2 In the event that, by [REDACTED] (or such other date as may be mutually agreed by the Parties in writing), the Parties have not executed and delivered a Ground Lease providing Seller the right to develop, construct, own and operate the Facility on the Site, with terms and conditions that are satisfactory to each Party in its sole and absolute discretion, then each Party shall thereafter have the right to terminate this Agreement by providing notice to the other Party; provided, however, that such right to terminate shall expire upon the Parties' execution and delivery of a Ground Lease. If a Party terminates this Agreement under this Section 3.5.2, upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination, and all Performance Security shall be returned to Seller no later than ten (10) Business Days following the effective date of such termination.

### 3.6 Preservation of Terms.

3.6.1 Each Party agrees that except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the other terms of this Agreement (including the right of a Party to terminate this Agreement as expressly set forth herein, including under Section 3.4.4), the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application by a Party to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

3.6.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement under Sections 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *NRG Power Marketing LLC v. Maine Public Utility Commission*, 130 S. Ct. 693 (2010).



## EXECUTION VERSION

### ARTICLE 4: OPERATION AND MAINTENANCE OF THE FACILITY

4.1 General Standards. During the Term, Seller shall have the sole responsibility, at its sole expense, to manage, control, operate and maintain, or cause others to manage, control, operate and maintain, the Facility in accordance with Prudent Industry Practices, manufacturer's recommendations and the requirements set forth in this Agreement. Seller shall, and shall cause others that manage, control, operate and maintain the Facility to: (i) comply with all Legal Requirements applicable to Seller, Gulf Power or the owner of the Site, and (ii) diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

4.1.1 Seller and Gulf Power shall mutually develop written Operating Procedures to accommodate the specifications of the Facility as constructed by Seller within the earlier of one hundred and eighty (180) Days prior to the Commercial Operation Date or the first instance of parallel operation. Such Operating Procedures shall address: (i) deliveries of energy during start-up and testing of the Facility; (ii) the method of day-to-day communications; (iii) clearance and switching practices; (iv) hourly energy forecasting; (v) daily energy reports; (vi) Facility operations log; (vii) reactive power output; (viii) technical limitations of Facility operation; (ix) coordination of maintenance scheduling; (x) designation of Confidential Information; (xi) the procedure for substantiating the transfer of Environmental Attributes under this Agreement; (xii) the verification of information with respect to the production of Environmental Attributes transferred to Gulf Power hereunder for purposes of certification; and (xiii) such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying the Operating Procedures in writing to reflect mutually agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

4.1.2 Seller shall, or shall cause others to, employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. To the extent consistent with Prudent Industry Practices, Seller shall keep accurate records of any accident or other occurrence at the Site that results in material injury to persons or material damage to property. Seller shall provide to Gulf Power reasonable access to these records upon not less than seven (7) Days notice during normal business hours, but shall not be required to provide access to employment or medical records regarding Facility personnel, except results of drug screening tests.

#### 4.2 Access to the Facility.

4.2.1 Upon reasonable notice, representatives of Gulf Power shall have access to the Facility and to property owned or controlled by Seller that is related to the Facility in order to: (i) conduct tours of the Facility for other Persons (including members of the public) and otherwise provide other such Persons with the opportunity to view and photograph the Facility; (ii) inspect,



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maintain, and test meters and other Gulf Power equipment; (iii) interrupt, monitor, or measure energy generated by the Facility as it deems necessary in accordance with Prudent Industry Practice; (iv) inspect the Facility; and (v) take such other action as may be reasonably necessary to exercise Gulf Power's rights under this Agreement, provided that (a) such access shall not materially interfere with the testing or operations of the Facility, and (b) Gulf Power complies with rules and regulations of Governmental Authorities having jurisdiction with respect to the Facility and with the Seller's reasonable policies and procedures applicable to the Facility including those with respect to safety.

4.2.2 In no event shall any of Gulf Power's statements, representations, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the maintenance and operation of the Facility. Any inspection by Gulf Power of property or equipment owned or controlled by Seller, or any review of or consent to Seller's plans by Gulf Power, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee.

4.3 Availability of Records. Seller shall keep complete and accurate records and all other data for the purpose of proper administration of this Agreement in accordance with the following guidelines:

4.3.1 All such records shall be maintained for a minimum of seven (7) years after the creation of such record or data and for any additional period of time required by any Legal Requirement or Governmental Authority. In the event Seller intends to dispose of or destroy any such records after such seven (7) year period, Seller shall provide Gulf Power with thirty (30) Days prior written notice.

4.3.2 Seller shall maintain an accurate and up-to-date operating log with records of: (i) real power production for each clock hour; (ii) changes in operating status and scheduled maintenance; (iii) any unusual conditions found during inspections; and (iv) any significant events related to the operation of the Facility.

4.3.3 Upon reasonable advance notice, either Party shall have the right to examine the records and data of the other Party in order to facilitate any determination that such Party is required or permitted to make under this Agreement.

4.3.4 Any information provided by either Party pursuant to this Section 4.3 shall be subject to the confidentiality provisions set forth in Section 17.16.

4.3.5 Gulf Power and Gulf Power's independent auditor shall have the right to inspect from time to time, upon reasonable notice to Seller, such books and records of Seller as are reasonably necessary for Gulf Power to determine whether Seller constitutes a VIE and the Agreement represents a VI. To



## EXECUTION VERSION

the extent such inspection requires access to confidential information of Seller, such information shall constitute Confidential Information subject to the provisions of Section 17.16 of this Agreement.

4.4 Scheduled Maintenance. Seller shall submit to Gulf Power, before October 1 of each Calendar Year, a schedule of planned Facility outages during which maintenance affecting three (3) MW or more of Facility generating capability will be performed for the next Calendar Year ("Scheduled Outages") (provided that Seller shall submit the first such schedule for the first Annual Period no later than ninety (90) Days before the commencement of the first Annual Period); provided, however, that: (i) Seller shall only conduct Scheduled Outages of the Facility during either (a) times that do not occur during a Daylight Period, or (b) a Daylight Period occurring in the Month of December; and (ii) there shall be no more than twenty (20) hours of Scheduled Outages during the total aggregate Daylight Periods of any given Month of December. Gulf Power shall have thirty (30) Days to review the proposed schedule of Scheduled Outages and may approve or reject such schedule in whole or in part, and may suggest alternative dates for Scheduled Outages. Scheduled Outages are subject to the prior approval of Gulf Power. Seller shall resubmit revised schedules for Scheduled Outages to Gulf Power within thirty (30) Days after Gulf Power's disapproval of a previous schedule, and Gulf Power and Seller agree to use commercially reasonable efforts to promptly develop schedules for Scheduled Outages that are mutually acceptable to the Parties.

4.5 Station Service. Seller shall be required to enter into a separate standard retail agreement with Gulf Power (or another appropriate entity permitted to serve customers at the Facility's location) for Station Service not directly provided by the Facility and will be responsible for bearing all associated costs.

4.6 Unplanned Outages. In addition to Scheduled Outages, Seller shall use commercially reasonable efforts to promptly notify Gulf Power of any event or condition (other than lack of or variations in sunlight) that will result in the Facility not being able to produce Solar Energy or a reduction of three (3) MW or more in the generating capability of the Facility, in either case, for more than sixty (60) consecutive minutes, including forced outages at the Facility and Force Majeure Events affecting the Facility. Such notices shall contain information describing such event or condition, the beginning date and time of such event or condition, the expected end date and time of such event or condition, the amount of Solar Energy that Seller expects will be provided during such event or condition, and any other information reasonably requested by Gulf Power. With respect to any such event or condition, Seller shall provide Gulf Power with such notice by any reasonable means required by Gulf Power, including by telephone or electronic mail. To the extent reasonably practicable, Seller shall cause any unplanned outages to occur during hours that are not within Daylight Periods.

### 4.7 Operating Committee.

4.7.1 The Parties shall establish an Operating Committee comprised of two (2) Operating Representatives, one (1) appointed by each of Seller and Gulf Power. Seller and Gulf Power, as the case may be, shall provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The Operating Representatives



## EXECUTION VERSION

shall meet as necessary, but not less often than once each Calendar Year, at a mutually agreeable time and place upon prior written notice. The Operating Representatives shall represent the Parties in all matters arising hereunder that may be delegated to them by mutual agreement of the Parties, but shall not have any authority to modify or amend the terms of this Agreement.

4.7.2 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be submitted to senior officers for discussion and resolution. All decisions and agreements made by the Operating Representatives or their principals shall be evidenced in writing.

### 4.8 Availability Forecasting.

4.8.1 Seller shall provide Gulf Power with forecasts of the delivery of energy under this Agreement as described below. Such availability forecasts shall include the updated status of all Facility equipment that may impact availability. Seller shall use commercially reasonable efforts to forecast the delivery of energy under this Agreement accurately and to transmit such information in a format reasonably acceptable to Gulf Power. Gulf Power and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Gulf Power.

4.8.2 No later than September 1 of each Calendar Year, Seller shall provide to Gulf Power a non-binding forecast of the hourly delivery of energy under this Agreement for an average Day in each Month of the following Calendar Year in a form reasonably acceptable to Gulf Power.

4.8.3 Ten (10) Business Days before the commencement of the first Annual Period, and thereafter ten (10) Business Days before the beginning of each Month during the Term, Seller shall provide to Gulf Power a non-binding forecast of the Hourly energy deliveries under this Agreement for each Day of the following Month in a form reasonably acceptable to Gulf Power.

4.8.4 No later than 5:00 a.m. (Central Prevailing Time) of each Day, Seller shall provide Gulf Power a non-binding forecast of energy deliveries under this Agreement for the remainder of such Day and the following seven (7) Days in a form reasonably acceptable to Gulf Power. Each such notice shall clearly identify, for each hour, Seller's forecast of all deliveries of energy pursuant to this Agreement. In the event that Seller foresees that actual deliveries under this Agreement for any Day will be materially different than a forecast previously provided for such Day, Seller shall, as soon as reasonably possible, provide notice to Gulf Power of such change and an updated forecast. The Operating Committee shall determine what constitutes such a material change and



## EXECUTION VERSION

identify the Operating Representative of Gulf Power that should receive notice of such change.

### 4.9 Weather Stations and Data.

4.9.1 No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least five (5) stand-alone meteorological stations at the Site to monitor and report the meteorological data required under Section 4.9.2. Seller shall maintain the meteorological station as necessary to provide accurate data with respect to the location of the Facility.

4.9.2 Upon Commercial Operation, and continuing through the end of the Term, Seller shall record and maintain the following data:

- (i) real power production by the Facility for each Hour;
- (ii) changes in operating status and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Facility; and

(v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Facility: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, precipitation, barometric pressure, back of module surface temperature and other pertinent meteorological conditions.

Gulf Power shall have real-time access to the required meteorological data at a frequency not to exceed every five (5) minutes. Seller shall provide Gulf Power a report within fifteen (15) Days after the end of each Month that provides the foregoing information for such Month as well as any other additional information that Gulf Power reasonably requests regarding the operation of the Facility that is collected and maintained by Seller in the ordinary course of Facility operations. Gulf Power reserves the right to validate any of the meteorological data provided by Seller with information publicly available from NOAA and nearby weather stations.

4.9.3 Seller shall make available to Gulf Power all data from any weather monitoring portals Seller elects to install at the Site.

ARTICLE 5: PERFORMANCE SECURITY

5.1 Seller's Provision of Performance Security.

5.1.1 If at any time there shall occur or exist a Security Posting Condition with respect to Seller, then Seller shall immediately notify Gulf Power thereof and, within three (3) Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Gulf Power, Performance Security that secures all of Seller's obligations to Gulf Power under this Agreement, in an amount not less than the Required Seller Post Amount. The Parties acknowledge and agree that, as of the Effective Date, a Security Posting Condition exists with respect to Seller and, accordingly, Seller shall provide such Performance Security to Gulf Power on the Effective Date and thereafter maintain such Performance Security in accordance with this Agreement.

5.1.2 So long as no Event of Default by or attributable to Seller and no Security Posting Condition shall have occurred and be continuing, Gulf Power shall cooperate with Seller, at Seller's request and expense, to release and return to Seller the Performance Security theretofore provided by Seller to and then held by Gulf Power.

5.1.3 If, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be more than the amount of the Performance Security provided by Seller to and then held by Gulf Power, Seller shall, within three (3) Business Days of Gulf Power's request, have additional Performance Security in the amount of such difference provided to Gulf Power. So long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, if, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be less than the amount of the Performance Security theretofore provided by Seller to and then held by Gulf Power, Gulf Power shall cooperate with Seller, at Seller's request and expense, to have the Performance Security then held by Gulf Power reduced by the amount of such difference, subject to Seller's obligation to thereafter provide to Gulf Power and maintain Performance Security in order to comply with the provisions of this Agreement.

5.1.4 For the avoidance of doubt, in the event that Gulf Power draws upon and/or realizes payment from the Performance Security provided by Seller under this Agreement, immediately upon such draw or payment, Seller shall provide to Gulf Power an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Gulf Power hereunder continues to be equal to or greater than the Required Seller Post Amount.



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5.1.5 If at any time a guaranty provided by Seller as a Seller Guaranty no longer satisfies the definition of Seller Guaranty under this Agreement (including due to the guarantor having a Material Adverse Financial Condition), Seller shall provide Gulf Power with other Performance Security that satisfies the requirements of this Agreement within three (3) Business Days of such occurrence and thereafter maintain such Performance Security pursuant to this Agreement.

5.2 Use of Performance Security. Gulf Power shall be entitled to draw upon and/or be paid from the Performance Security provided by Seller: (i) for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Event of Default has occurred, a termination date has been declared under Section 11.3, or this Agreement has expired or otherwise been terminated; (ii) if such Performance Security is within ninety (90) Days of expiry, expiration or termination and substitute or replacement Performance Security that satisfies the requirements of this Agreement as to form, issuer and amount has not been provided; and/or (iii) otherwise in compliance with the terms of such Performance Security.

5.3 Return of Performance Security. Gulf Power shall return the Performance Security to Seller upon the later to occur of: (i) the expiration or termination of this Agreement; and (ii) the indefeasible and irrevocable payment and performance of all of Seller's obligations under this Agreement.

## ARTICLE 6: INTERCONNECTION AND METERING

### 6.1 Interconnection.

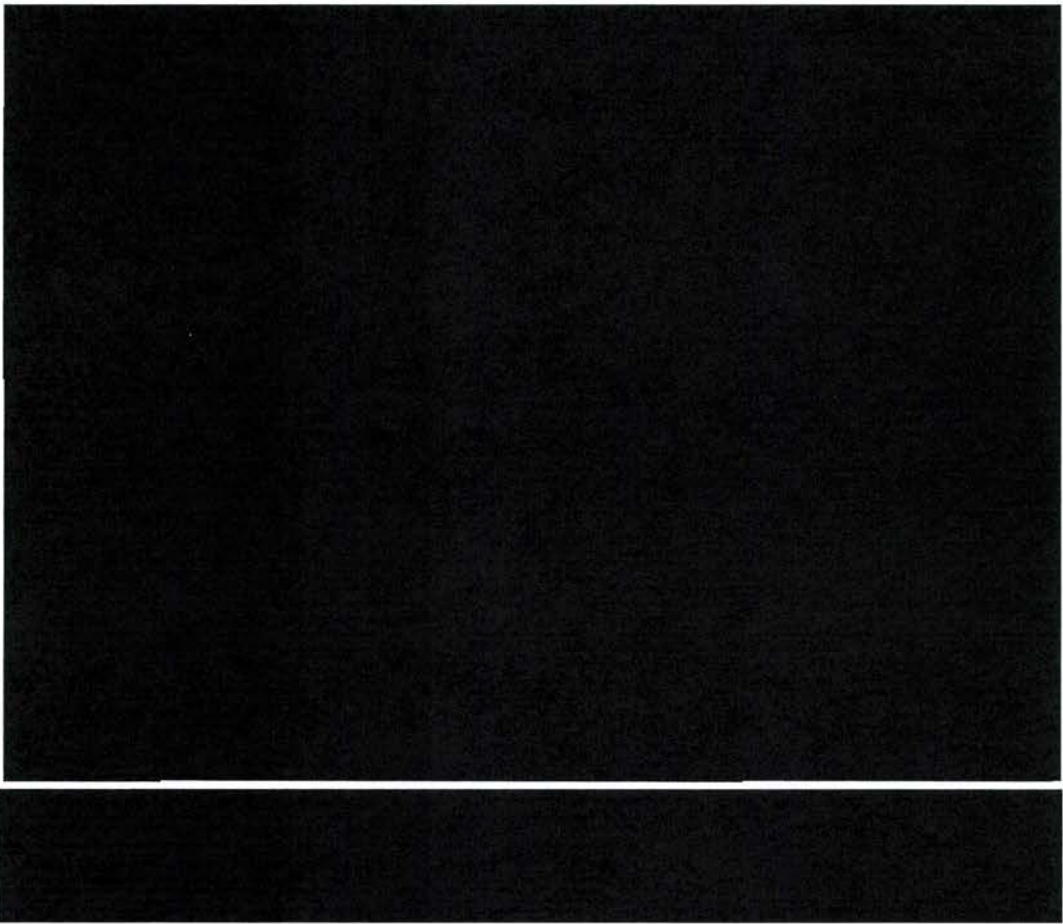
6.1.1 By no later than thirty (30) Days after the Effective Date, Seller shall submit a request, pursuant to the applicable interconnection process of the Transmission Provider, to interconnect the Facility to the Electric System. Seller shall maintain and use diligent efforts to pursue such interconnection of the Facility in accordance with the applicable interconnection process, including the timely execution and submission of all required study agreements, fees, deposits and other charges. Seller shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.

6.1.2 If at any time, based on interconnection studies or otherwise, Gulf Power determines that the Transmission Provider and/or Gulf Power will be responsible, in the aggregate, for costs and expenses associated with the interconnection of the Facility to the Electric System (including under the Interconnection Agreement, whether for network upgrades or other facilities, and including all amounts that would be required to be repaid or refunded to Seller in connection with upgrades and facilities associated with interconnection and related interest and tax payments) in an amount that exceeds the Interconnection Cost Threshold, Gulf Power shall be entitled to terminate this Agreement by providing notice to Seller. Upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for liabilities and

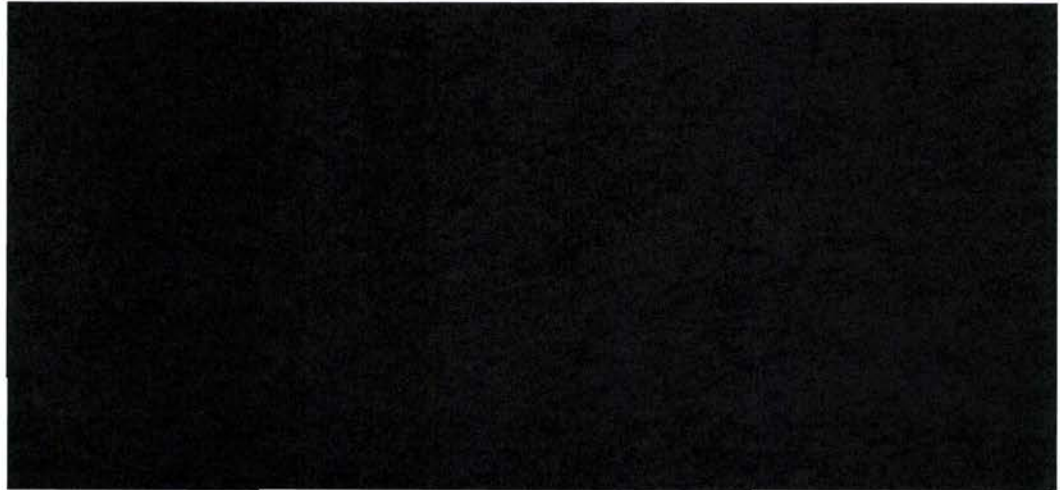
## EXECUTION VERSION

obligations that survive termination as provided in this Agreement or which accrue prior to or at termination.

6.1.3 Seller shall use diligent efforts to execute an Interconnection Agreement with Transmission Provider within thirty (30) Days of being presented with an executable version of the Interconnection Agreement (including, as determined by Gulf Power, an agreement that is not under the Southern OATT that can be used for Qualifying Facilities). The Parties agree that the Interconnection Agreement shall contain terms and conditions that are consistent with the Interconnection Requirements set forth in Appendix H, as well as other material terms, conditions and requirements pursuant to the interconnection policies and requirements of the Transmission Provider and its Affiliates. Thereafter, the Interconnection Agreement shall be maintained throughout the Term of this Agreement. Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Gulf Power in accordance with the notice provisions of Section 17.11. Gulf Power shall not be responsible under this Agreement for any costs and expenses (including overheads) incurred in connection with the design, construction, installation and maintenance of the facilities under the Interconnection Agreement. Seller is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.







6.1.6 If the Facility does not reach Commercial Operation, and if costs relating to transmission or other Transmission Provider Installed Facilities were incurred in connection with this Agreement or the Interconnection Agreement, in addition to Seller's other obligations under this Agreement (including under Section 2.6), Seller shall owe and be liable to Gulf Power for such costs.

6.2 Metering.

6.2.1 The Parties shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Industry Practices in order to measure and record the amount of Solar Energy delivered from the Facility to the Point of Delivery. The meters shall be of a mutually acceptable accuracy range and type. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by Gulf Power for the purpose of determining the amount of Solar Energy delivered to the Point of Delivery. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Gulf Power. Seller, may, at its own cost, install additional meters or other such facilities, equipment or devices on Seller's side of the Point of Delivery as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Gulf Power will be entitled to base its invoiced amounts solely by reference to its own Metering System.

6.2.2 Gulf Power shall inspect and test all meters at such times as will conform to Prudent Industry Practices, but not less often than every two (2) Annual Periods. Upon reasonable written request to Gulf Power, Seller may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Annual Periods. Seller shall be responsible, and shall reimburse Gulf Power, for all costs and expenses incurred by or on behalf of Gulf Power in connection with such inspections or tests.

## EXECUTION VERSION

6.2.3 If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the metering System to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Gulf Power shall pay Seller any additional amounts then due for deliveries of Solar Energy during the Adjustment Period or Gulf Power shall be entitled to a credit against any subsequent payments for Solar Energy, as the case may be.

6.2.4 Without limiting the requirements of Section 6.2.1, Gulf Power and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of Seller's metering equipment.

## ARTICLE 7: PURCHASE AND SALE OF ENERGY; ENVIRONMENTAL ATTRIBUTES; TRANSMISSION AND CURTAILMENT

### 7.1 Energy.

7.1.1 During each Annual Period, Seller agrees to sell and deliver to the Point of Delivery, and Gulf Power agrees to purchase and receive at the Point of Delivery, one hundred percent (100%) of the Solar Energy generated by the Facility and delivered by Seller to the Point of Delivery. Seller shall provide and deliver to Gulf Power Solar Energy pursuant to this Agreement at all times, and to the extent, that the Facility is available and is capable of producing energy. Seller shall not sell or provide Solar Energy to any Person other than Gulf Power. In addition, Gulf Power shall be entitled to all revenues that may be received by Seller from any other Person(s) for any and all Electrical Products.

7.1.2 Appendix F provides the method for determining Seller's expectation of the nominal annual amounts of Solar Energy to be delivered to Gulf Power, having taken into consideration expected solar panel degradation, which constitute the "Annual Energy Contract Amount." Payments to the Seller for actual Solar Energy delivered to the Point of Delivery will be determined as set forth in Appendix A.



## EXECUTION VERSION

7.1.3 In consideration of the sale and purchase of Solar Energy under this Agreement, Seller shall transfer to Gulf Power at no additional cost any and all Environmental Attributes associated with such Solar Energy at the time the Solar Energy is delivered to the Point of Delivery, pursuant to Section 7.5.

7.2 Testing and Test Energy and Associated Environmental Attributes. Seller shall not commence initial deliveries of Solar Energy to the Point of Delivery without the prior written consent of Gulf Power. Gulf Power shall purchase Solar Energy (and Seller shall transfer to Gulf Power all associated Environmental Attributes) produced by Seller during Facility testing and start-up procedures at such times and under conditions acceptable to Gulf Power and Seller at a rate equal to seventy percent (70%) of AIER for the relevant hour(s) and otherwise in accordance with the terms of this Agreement. Representatives of Gulf Power shall have the right to be present during any such testing. Gulf Power shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to achieve Commercial Operation, including coordination of the production and delivery of test energy. Seller shall provide Gulf Power not less than thirty (30) Days written notice before any testing to establish the Facility's Commercial Operation Date.

7.3 Title and Risk of Loss. Title and risk of loss of Solar Energy shall pass from Seller to Gulf Power at the Point of Delivery.

7.4 Expansion of the Facility. Seller, or any Affiliates thereof, shall not enter into any contract for the sale of solar energy, Environmental Attributes or Electrical Products from any addition to or expansion of the Facility, until and unless (i) Seller shall have first offered in writing (in the form of a proposal contract) to enter into a contract with Gulf Power on business terms substantially the same, or more favorable to Gulf Power, as those specified in a) any proposal or letter of intent between Seller and any other party with respect thereto or b) this Agreement, and (ii) Gulf Power does not accept such offer within sixty (60) Days of the date presented to Gulf Power in writing (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller) and including a notice to Seller that Gulf Power is ready and willing to enter into a contract reflecting such business terms within ninety (90) Days thereafter (or such shorter period of time as is appropriate to the term and type of sale contemplated by Seller). For the avoidance of doubt, nothing in this Section 7.4 shall be construed to abrogate the obligation to sell and purchase renewable energy pursuant to PURPA.

7.5 Provision of Environmental Attributes. In consideration of the purchase of Solar Energy under this Agreement, Seller shall transfer, deliver and otherwise provide to Gulf Power at no additional cost all Environmental Attributes associated with such Solar Energy. Said Environmental Attributes shall be transferred, delivered and otherwise provided to Gulf Power as soon as practicable, but in no event later than thirty (30) Days after the associated Solar Energy was generated.

7.5.1 All Environmental Attributes provided by Seller to Gulf Power under this Agreement shall be sourced from the Facility.

7.5.2 Gulf Power shall have exclusive rights to all Environmental Attributes associated with the Solar Energy, which shall include the exclusive right to: (i) claim that energy from the Facility was generated from a renewable



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type of fuel; (ii) report that it owns the Environmental Attributes to any Governmental Authority or other party for compliance with any Legal Requirement or other purposes; and (iii) claim the Environmental Attributes to customers or potential customers for purposes of marketing and advertising, provided, however, Seller and its Affiliates shall be entitled to issue marketing materials and other statements regarding their respective operations and business activities but only so long as the issuance of such materials and statements does not reduce the economic value to Gulf Power of the Environmental Attributes to be transferred hereunder or otherwise reduce Gulf Power's claims to such Environmental Attributes or result in the double counting of such Environmental Attributes.

7.5.3 Seller shall maintain and provide to Gulf Power (or, if directed by Gulf Power, other applicable Persons) such information as may be necessary to substantiate, account for, and track the quantity of Environmental Attributes associated with the Facility, including all information necessary for Gulf Power to comply with the requirements of any Governmental Authority or other certifying or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Seller shall provide Gulf Power with attestations regarding the accuracy of such information as reasonably requested by Gulf Power. Gulf Power shall have the right to disclose such information publicly or to any third party, without the prior consent of Seller, as reasonably required in connection with the operation of Gulf Power's business, including disclosures: (i) to any entity or person that purchases the Environmental Attributes from Gulf Power; (ii) to any Governmental Authority; (iii) to any auditors or any Person that certifies or sets standards with respect to Environmental Attributes; and (iv) as necessary for Gulf Power to defend, verify or substantiate its ownership of the Environmental Attributes under this Agreement.

7.5.4 At Gulf Power's request, Seller shall take all necessary action, including the completion and submission of all required attestation forms and other information, in order to obtain certification by Green-e Energy pursuant to the Green-e National Standard (or other certification from such other entity designated by Gulf Power) of the Facility and all Environmental Attributes required to be provided under this Agreement. Seller shall be responsible for all costs and expenses associated with obtaining such certification, except for such costs and expenses that are required to be paid to Green-e or other non-Affiliates of Seller, which shall be the responsibility of Gulf Power.

7.5.5 In no way shall the right to, transfer of, or acquisition of Environmental Attributes under this Agreement be deemed to cause Gulf Power to be deemed an owner or operator of the Facility or in any way cause Gulf Power to be responsible for the Facility's compliance with any Legal Requirements.



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### 7.6 Gulf Power Network Transmission.

7.6.1 With respect to the energy required to be delivered to Gulf Power under this Agreement, Gulf Power shall request network transmission service from the Facility on a long-term basis, by requesting the Facility to be designated as a Network Resource, for serving Gulf Power's network load, but only if such designation does not require the construction or installation of transmission upgrades or other facilities on the Electric System (excluding the Transmission Provider Installed Facilities to be constructed pursuant to the Interconnection Agreement to interconnect the Facility to the Electric System). Any such designation that is made available to Gulf Power pursuant to such request shall be obtained and maintained by Gulf Power commencing on the date that energy deliveries begin under this Agreement and thereafter throughout the Term. Such request shall be consistent with the Network Resource process described in Section 30 of the Southern OATT (or any successor provision).

7.6.2 No later than thirty (30) Days after the Interconnection Agreement is executed by Seller and the Transmission Provider, Gulf Power shall confirm to Seller whether the Facility can be designated as a Network Resource from the date that service commences under this Agreement through the end of the Term, without the construction or installation of transmission upgrades or other facilities, as described in Section 7.6.1. In the event such Network Resource designation cannot be made for any reason, then Gulf Power shall notify Seller of the same and this Agreement shall immediately terminate. Upon a termination pursuant to this Section 7.6.2, neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

7.6.3 Notwithstanding the foregoing provisions of this Section 7.6, and for the avoidance of doubt, because network transmission service is the type of service (as opposed to point-to-point service) required for serving Gulf Power's native load, Gulf Power shall have no obligation to procure or obtain point-to-point transmission service or any other type of transmission service on the Electric System other than the service described in Section 7.6.1.

### 7.7 Transmission Curtailment.

7.7.1 Notwithstanding any other provision of this Agreement, Gulf Power shall be entitled to require Seller to curtail or cease energy deliveries under this Agreement during any period to the extent that: (i) there is an Emergency or Gulf Power reasonably anticipates that an Emergency will occur; (ii) there is a Transmission Curtailment Event occurring or existing; or (iii) Gulf Power is unable to receive Solar Energy from the Facility at the Point of Delivery, or Gulf Power is unable to transmit such energy to Gulf Power's customers, due to a Force Majeure Event affecting Gulf Power or its systems, facilities or equipment. Seller shall comply with any such requirement as directed by Gulf Power, and



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Gulf Power shall be relieved from the obligation to purchase and receive Solar Energy to the extent of the required curtailment or cessation of deliveries. The amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.7.1 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.7.2 Under no circumstance will Gulf Power be required to take any of the following actions in order to facilitate or enable energy under this Agreement to be received by, or transmitted or delivered to, any Person: (i) the construction or installation of any additions or upgrades to any transmission or distribution facilities (except as specifically provided in the Interconnection Agreement); (ii) the curtailment or interruption of service to any customer of Gulf Power or any of its Affiliates; or (iii) the undertaking of congestion management procedures (including redispatch of any other generation resource).

7.8 Curtailments under the Interconnection Agreement. Gulf Power shall be entitled to require Seller to curtail or cease deliveries of Solar Energy under this Agreement or disconnect the Facility from the Electric System for any of the reasons set forth in the Interconnection Agreement and during periods of maintenance, repair or replacement of interconnection facilities, including Seller Installed Facilities, owned and operated by Gulf Power. In such event, Gulf Power shall be relieved from the obligation to purchase and receive energy to the extent of the required curtailment, cessation and/or disconnection, and such energy that Gulf Power is not required to purchase and receive shall be excluded from the determination of Annual and Monthly Delivered Energy for all purposes of this Agreement. Except to the extent that such required curtailment or cessation of deliveries is due to a condition or circumstance existing with respect to Seller's facilities or equipment, the amount of Solar Energy that would have been delivered by Seller to Gulf Power at the Point of Delivery pursuant to this Agreement but that was not delivered to the Point of Delivery as a result of Gulf Power's directive under this Section 7.8 shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage, but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

### 7.9 Other Operational Curtailments.

7.9.1 In addition to any required curtailment or cessation of deliveries for the reasons set forth in Section 7.7 or Section 7.8, Gulf Power shall be entitled to require Seller to curtail or cease the delivery of energy under this Agreement in Gulf Power's discretion due to operational reasons associated with load balancing. Seller shall comply with any such requirement as directed by Gulf Power. Any hour for which Gulf Power directs the curtailment or cessation of deliveries of energy under this Section 7.9.1 (excluding the curtailment or cessation of deliveries required by Gulf Power for a reason under Section 7.7 or Section 7.8) shall be referred to as a "Load Balancing Hour".



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7.9.2 The amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive under Section 7.9.1 for the first twenty (20) Load Balancing Hours of each Calendar Year shall constitute Curtailed Energy under Appendix A. Such Curtailed Energy will be included in the Annual Delivery Percentage but will not be included in Annual or Monthly Delivered Energy calculations in Appendix A.

7.9.3 If Gulf Power requires the curtailment or cessation of deliveries under Section 7.9.1 in excess of twenty (20) Load Balancing Hours in a given Calendar Year, then the amount of energy that is not delivered to the Point of Delivery as a result of Gulf Power's directive(s) under Section 7.9.1 during such excess Load Balancing Hours shall constitute Deemed Delivered Energy. Such Deemed Delivered Energy will be included in both the Annual Delivery Percentage and Annual and Monthly Delivered Energy calculations in Appendix A.

7.10 Determination. In the event that Gulf Power exercises its rights to require the curtailment or cessation of deliveries of energy as provided in Section 7.7, Section 7.8, or Section 7.9, then the resulting amounts of Curtailed Energy and Deemed Delivered Energy (as applicable) shall be determined by an agreed upon methodology approved by the Operating Committee, which shall take into account, for the relevant time period, Facility availability information, weather conditions and other pertinent Facility data. In addition, notwithstanding any other provision of this Agreement, there shall be no amounts of Curtailed Energy or Deemed Delivered Energy attributable to periods prior to COD.

## ARTICLE 8: MONTHLY ENERGY PAYMENTS

### 8.1 Monthly Energy Payments.

8.1.1 Gulf Power shall pay Seller a Monthly Energy Payment in accordance with Appendix A for Solar Energy delivered to the Point of Delivery by Seller during each Annual Period. If a true-up pursuant to the provisions of Section 2 of Appendix A results in an over/under payment for a Calendar Year, then, following notice by Gulf Power of such over/under payment, and unless the Parties agree otherwise, Seller shall remit the overpayment amount, or receive the underpayment amount, in full from the next succeeding twelve (12) Monthly Energy Payment(s) until such over/under payment is satisfied in full; provided that for an over/under payment determined at the end of the Term, Seller shall remit the total overpayment, or receive the total underpayment amount, within twenty (20) Days after such amount is determined by Gulf Power.

8.1.2 Seller acknowledges and agrees that all price information provided by Gulf Power to Seller is Confidential Information subject to Section 17.16.

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8.1.3 Gulf Power's obligation to pay the Monthly Energy Payment shall commence for Solar Energy deliveries on and after the Commercial Operation Date.

### ARTICLE 9: PAYMENT PROCEDURE

#### 9.1 Billing and Payment.

9.1.1 As promptly as practicable after the first Month that energy deliveries commence under this Agreement and each Month of the Term thereafter, Gulf Power shall provide Seller with the meter readings for such Month no later than the fifteenth (15th) Business Day of the following Month.

9.1.2 Within ten (10) Business Days of receipt of the Monthly meter readings, Seller shall provide Gulf Power with an invoice stating the Monthly Energy Payment calculated for such Month pursuant to Section 8.1.

9.1.3 At the option of Seller, Gulf Power will provide a net payment or net bill, whichever is applicable, that consolidates amounts owing to Seller with amounts owing to Gulf Power.

9.1.4 Each Monthly payment shall be due and payable on or before the twentieth (20th) Day after a Party's receipt of such invoice. If such twentieth (20th) Day after a Party's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Payment of an invoice shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before such twentieth (20th) Day, then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded at the Interest Rate.

#### 9.2 Billing Disputes and Final Accounting.

9.2.1 The Parties shall each have until the three hundred sixty-fifth (365th) Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

9.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party (the "Billing Dispute Notice") that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount.



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9.2.3 In the event that a Party, by timely notice in accordance with Sections 9.2.1 and 9.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within twenty (20) Days following receipt by the other Party of the Billing Dispute Notice, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error (the "Dispute Review Notice"). Reimbursements determined to be due from a Party under this Section 9.2.3 shall be included on the next Monthly invoice and shall include interest from the date the original payment was received until the date such reimbursement together with interest is invoiced, which interest shall be compounded at the Interest Rate.

9.2.4 In the event a Party disputes the other Party's resolution under Section 9.2.3 of any question or contest by such Party of the correctness of any charge or credit contained in a Monthly invoice, then the Parties shall submit the dispute for resolution in accordance with Article 16.

## ARTICLE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants. Seller makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.1.1 Seller is a limited liability company, duly organized and validly existing under the laws of the state of Florida, is the sole owner of the Facility and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.1.2 The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, any charter, bylaw, operating agreement or other formation or organizational document of Seller, or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound.

10.1.4 This Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may



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be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.1.5 There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof or that could reasonably be expected to have a material adverse effect on Seller.

10.1.6 Seller covenants to Gulf Power that it shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance (and specifically including any increase in property taxes or ad valorem taxes that result from the existence of the Facility on the Site); (ii) the production, sale and delivery of Solar Energy under this Agreement; and (iii) the production and provision of Environmental Attributes under this Agreement, in any case of the foregoing (i), (ii) or (iii) whether such charges, taxes, assessments or fees are assessed on Seller or Gulf Power. It is the intent of the Parties that such charges, taxes, assessments or fees for which Seller is responsible shall include any sales, transfer and other similar charges, taxes, assessments or fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement and the provision of Environmental Attributes to Gulf Power under this Agreement, whether the same are imposed on Seller or Gulf Power.

10.1.7 From the Effective Date through the end of the Term, Seller covenants that from its perspective and due to any of Seller's actions, Gulf Power will not be required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by the Financial Accounting Standards Board, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements. Seller covenants to promptly notify Gulf Power following any determination made by Seller or its independent auditor that Seller constitutes a VIE for which Gulf Power is the Primary Beneficiary as a result of this Agreement considered individually or together with any other power purchase agreements between Seller and Gulf Power. At the time of execution of this Agreement and thereafter prior to each June 1 occurring during the Term, Seller shall provide Gulf Power a VIE certification form in the form of Appendix D signed by the chief financial officer of Seller.

10.1.8 Seller shall enter into the Interconnection Agreement and remain in compliance with the Interconnection Agreement.



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10.1.9 With respect to the Environmental Attributes provided to Gulf Power under this Agreement, Seller represents, warrants and covenants throughout each Annual Period that:

10.1.9.1 Seller has, and shall transfer to Gulf Power good and marketable title to such Environmental Attributes;

10.1.9.2 Such Environmental Attributes satisfy and comply with all of the requirements of the Green-e National Standard for certification by Green-e and therefore constitute certifiable Green-e Renewable Energy Certificates; provided that the Parties recognize that, as of the Effective Date, Green-e will only certify Renewable Energy Certificates from a given generation facility as being eligible for meeting the Green-e National Standard for a fifteen (15) year term and Seller shall not be in violation of this Section 10.1.9.2 solely by reason of the age of the Facility exceeding any Green-e facility age limitations (as of the Effective Date or in the future).

10.1.9.3 Seller has the right to, and shall, deliver and provide all Environmental Attributes (and all rights, title and interest to such Environmental Attributes) to Gulf Power free and clear of any liens, taxes, claims, security interests and any other encumbrances;

10.1.9.4 Seller has not sold or transferred any of the Environmental Attributes to any other Person;

10.1.9.5 The Environmental Attributes are separate from the electric energy generated by the Facility;

10.1.9.6 Neither the Environmental Attributes nor the electric energy that was generated with the Environmental Attributes have been utilized by Seller or any Person (other than Gulf Power or any person to whom Gulf Power sells or transfers the same) to satisfy or comply with any Legal Requirement or any voluntary or involuntary renewable energy requirement or standard, including any renewable portfolio standard, renewable energy standard or any other similar standard or requirement;

10.1.9.7 The Environmental Attributes include all those products or rights relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits, in each case as specified in and required by the definition of Environmental Attributes, and they have not been used to satisfy or comply with other greenhouse gas or carbon reduction requirements, standards, obligations, or initiatives. The electric energy that was generated with the Environmental Attributes has not been sold, separately marketed or otherwise separately represented as renewable energy by any other person;

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10.1.9.8 To Seller's knowledge, no Person has made any claim or statement in any form that a Person other than Gulf Power or any person to whom Gulf Power sells or transfers the same owns or possesses any right, title, or interest in or to any of the Environmental Attributes;

10.1.9.9 Except as permitted under Section 7.5.2, neither Seller nor any of its Affiliates has made any claim or statement in any form that the energy that was generated with the Environmental Attributes was generated from solar rays or other sustainable, perpetual, renewable or other particular type of fuel, including: (i) in any marketing or advertising materials; (ii) any product content label or other disclosures regarding fuel mix; (iii) any reports under any emissions trading program, public or private; or (iv) any report or disclosure for purposes of complying with a Legal Requirement of meeting any renewable portfolio standard, renewable energy standard, or carbon reduction initiative (whether voluntary or involuntary);

10.1.9.10 No Environmental Attributes required to be transferred to Gulf Power under this Agreement violate any applicable rules or requirements of any certification authority (whether with respect to voluntary or involuntary certification) or Governmental Authority pertaining to double counting; and

10.1.9.11 Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

10.1.10 Nothing in Section 10.1.9 shall be interpreted or construed as relieving or diminishing any obligation of Seller to provide Environmental Attributes that are in conformance with the requirements of Section 7.5.

10.2 Gulf Power Representations, Warranties and Covenants. Gulf Power makes the following additional representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

10.2.1 Gulf Power is a corporation, duly organized and validly existing under the laws of the state of Florida and has the legal power and authority to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

10.2.2 The execution, delivery and performance by Gulf Power of this Agreement have been duly authorized by all necessary corporate action, and



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do not and shall not require any consent or approval of any other entity other than that which has been obtained.

10.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirements, or any charter, bylaw, or other formation or organizational document of Gulf Power, or any agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Gulf Power is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

10.2.4 This Agreement is the legal, valid and binding obligation of Gulf Power enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10.2.5 There is no pending, or to the knowledge of Gulf Power, threatened action or proceeding affecting Gulf Power before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

10.2.6 Gulf Power shall, at all times during the Term, pay or cause to be paid, all charges, taxes, assessments and fees with respect to subsequent sales made by Gulf Power to other Persons of the Solar Energy and Environmental Attributes received by Gulf Power under this Agreement. It is the intent of the Parties that such charges, taxes, assessments and fees for which Gulf Power is responsible shall not include any sales, transfer and other similar charges, taxes, assessments and fees on the sale to Gulf Power and purchase from Seller of Solar Energy under this Agreement or the provision of Environmental Attributes to Gulf Power under this Agreement.

10.3 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by Seller and by Gulf Power in or under this Agreement shall survive the execution and delivery of this Agreement and any action taken pursuant hereto.

## ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1 Default by Seller. Any one or more of the following events shall constitute an Event of Default by Seller and shall give Gulf Power the right to exercise the remedies specified in Section 11.3:

11.1.1 Seller: (i) sells or provides Solar Energy or Environmental Attributes from the Facility to a third party during any Annual Period, except for any sales solely attributable to any additional or expanded portion of the Facility



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for which Seller had complied with Section 7.4 and Gulf Power has declined to accept the offer for such Solar Energy under Section 7.4, or (ii) makes any sales of Solar Energy from the Facility in violation of PURPA, as applicable.

11.1.2 Seller fails to comply or cause compliance with the requirements of Article 5 unless cured by the end of the next Business Day following receipt of a written notice from Gulf Power of a failure under this Section 11.1.2.

11.1.3 Seller fails to provide Gulf Power with the Minimum Energy Contract Amount for two consecutive Calendar Years, provided, however, that any Curtailed Energy for a Calendar Year shall count toward the Minimum Energy Contract Amount for such Calendar Year for the purpose of this Section 11.1.3.

11.1.4 Seller fails to pay Gulf Power any undisputed amount payable by Seller to Gulf Power pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Seller fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Gulf Power.

11.1.5 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, which was sought by an entity other than Seller, adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

11.1.6 Seller shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Seller of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.



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11.1.7 A violation of the requirements of Section 17.1.1 through a sale, assignment or transfer of this Agreement, or a violation of Section 17.2.

11.1.8 Any representation or warranty made by Seller herein or in any certificate delivered to Gulf Power pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Gulf Power of such representation or warranty having been incorrect;

11.1.9 Any failure of any covenant made by Seller in Section 10.1.7 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Gulf Power (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller must submit a cure plan prior to the end of such thirty (30) Day period outlining steps to assure Gulf Power that the failure will be cured, which cure plan shall be subject to Gulf Power's approval, such approval not to be unreasonably withheld, conditioned or delayed by Gulf Power, but in no event shall the total cure period exceed one hundred and eighty (180) Days) and such cure removes any adverse effect on Gulf Power of such failure of such covenant; provided, however, that no Event of Default by Seller shall occur pursuant to this Section 11.1.9 if Seller cooperates with Gulf Power during the cure period and Seller takes commercially reasonable actions (without causing a material adverse effect on Gulf Power) necessary to bring about a determination by the end of the cure period by Gulf Power and its independent auditor that Seller does not constitute a VIE in Gulf Power's or any of its Affiliates' financial statements for which Gulf Power is the Primary Beneficiary as a result of this Agreement; provided, further, if Gulf Power becomes a Primary Beneficiary by no fault of Seller and a cure cannot be effected within the cure period, Gulf Power may terminate this Agreement, Seller shall not have any further obligation or liability to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.10 Gulf Power is required by any Legal Requirement or any accounting standard, including those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's or any of its Affiliates' financial statements and such condition continues for a period of thirty (30) Days after written notice thereof from Gulf Power unless such cure is not capable of being effected within such thirty (30) Day



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period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days. Gulf Power may seek remedies pursuant to Section 11.3 for an Event of Default caused under this Section 11.1.10; provided, however, upon termination of this Agreement, if the Seller is able to clearly demonstrate that the Event of Default was not caused by any direct or indirect action by Seller, then Seller shall have no further liability or obligation to Gulf Power due to such Event of Default (except that Seller shall have those obligations and liabilities set forth in Section 3.3), and upon any such termination neither Party shall have any further liability or obligation to the other Party under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination;

11.1.11 The Ground Lease is terminated by Gulf Power due to the default or breach of the Ground Lease by Seller; or

11.1.12 Seller fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.1.1 through 11.1.11, unless Seller cures such failure within thirty (30) Days after a written demand by Gulf Power to do so and such cure removes any adverse effect on Gulf Power resulting from such failure

11.2 Default by Gulf Power. Any one or more of the following events shall constitute an Event of Default by Gulf Power and shall give Seller the right to exercise the remedies specified in Section 11.3:

11.2.1 Gulf Power fails to pay Seller any undisputed amount payable by Gulf Power to Seller pursuant to this Agreement for twenty (20) Business Days after the same shall have become due and payable and Gulf Power fails to cure such failure to pay within twenty (20) Days after receipt of written demand therefor from Seller.

11.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Gulf Power in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Gulf Power bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Gulf Power under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Gulf Power or of any substantial part of its affairs.

11.2.3 Gulf Power shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Gulf Power in any involuntary case or proceeding under



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any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Gulf Power of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Gulf Power or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

11.2.4 A violation of the requirements of Section 17.1.2 through an assignment or transfer of this Agreement.

11.2.5 Any representation or warranty made by Gulf Power herein or in any certificate delivered to Seller pursuant hereto shall prove to be incorrect in any material respect when made, unless Gulf Power shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Gulf Power by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Gulf Power shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

11.2.6 The Ground Lease is terminated by Seller due to the default or breach of the Ground Lease by Gulf Power; or

11.2.7 Gulf Power fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 11.2.1 through 11.2.6, unless Gulf Power cures such failure within thirty (30) Days after a written demand by Seller to do so and such cure removes any adverse effect on Seller resulting from such failure.

### 11.3 Remedies for Events of Default.

11.3.1 Upon the occurrence of an Event of Default, the non-defaulting Party ("Non-Defaulting Party") shall be entitled to take one or more of the following actions in its discretion: (i) terminate this Agreement by giving written notice thereof to the defaulting Party ("Defaulting Party") setting a termination date, and recover liquidated damages from the Defaulting Party pursuant to Section 11.3.2, which liquidated damages shall be paid by the Defaulting Party to the Non-Defaulting Party within three (3) Business Days after such termination date is set by the Non-Defaulting Party; (ii) if the Event of Default is for the failure to pay an amount of money pursuant to this Agreement (including any failure by the Defaulting Party to indemnify the Non-Defaulting



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Party under Article 13), pursue an action for damages equal to the amount of money not paid, pursuant to the procedure in Article 16; (iii) with respect to Gulf Power as the Non-Defaulting Party, if the Event of Default is due to Seller's failure to provide Environmental Attributes in accordance with this Agreement or if any of the representations, warranties or covenants set forth herein with respect to Environmental Attributes are untrue or not satisfied, Gulf Power may pursue an action against Seller for damages equal to the costs and expenses associated with procuring replacement Environmental Attributes (as applicable); and/or (iv) proceed by appropriate proceedings in equity. The foregoing remedies shall be in addition to, and not in lieu of, any remedies the Parties may have under the Ground Lease or any other agreement between the Parties.

11.3.2 If the Non-Defaulting Party terminates this Agreement pursuant to Section 11.3.1, the liquidated damages required to be paid by the Defaulting Party shall be equal to: (i) if the Defaulting Party is Gulf Power, an amount equal to the Buyer Amount that applies for the period during which such termination occurs, as determined under Appendix J; or (ii) if the Defaulting Party is Seller, an amount equal to the Seller Amount that applies for the period during which such termination occurs, as determined under Appendix J, less (but only if such termination occurs after the Commercial Operation Date) the Site Remediation Amount that applies at the time of such termination (provided that in addition to the payment of such liquidated damages, Seller shall also have those liabilities and obligations set forth in Section 3.3).

11.4 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSE HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, AND IN SUCH EVENT SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES FOR WHICH INDEMNIFICATION IS PROVIDED UNDER THIS AGREEMENT. TO THE EXTENT THE DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.5 Disclaimer of Warranties. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THE TEXT HEREOF. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.



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11.6 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

### ARTICLE 12: COMPLIANCE WITH LAWS

12.1 Compliance. Seller represents, warrants and covenants that throughout the Term, Seller shall (i) be in compliance with all Legal Requirements with respect to the design, construction, ownership, operation and maintenance of the Facility, including all required Consents, and if applicable, the mitigation of environmental impacts, and (ii) pay all costs, expenses, charges and fees in connection therewith.

12.2 Approvals. Seller and Gulf Power each agree to use diligent efforts to apply for promptly and to pursue any required acceptances or approvals from Governmental Authorities for the consummation of the transactions contemplated by this Agreement or for the giving of effect to the expiration of this Agreement or any termination of this Agreement. This provision is not intended to subject this Agreement to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement as of the Effective Date.

12.3 Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur additional costs in carrying out its obligations under this Agreement, such Party agrees to pay all costs associated with such Change of Law and acknowledges that the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law. Except as provided in Section 3.4, in the event that after the Effective Date a Change of Law occurs that causes a Party to incur a reduction in costs that are projected to decrease such Party's costs in carrying out its obligations under this Agreement, such realized savings shall be retained by such Party and the Monthly Energy Payments made by Gulf Power to Seller pursuant to this Agreement shall not be altered as a result of such Change of Law.

12.4 Federal Acquisitions Regulations Compliance. Gulf Power is a government contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government, and as such, is required to conduct business with entities in compliance with the regulations contained herein. Accordingly, Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995);
- (iii) 52.203-7 Anti-Kickback Procedures (JUL 1995);
- (iv) 52.219-8 Utilization of Small Business Concerns (MAY 2004);
- (v) 52.222-21 Prohibition of Segregated Facilities (FEB 1999); and
- (vi) 52.222-26 Equal Opportunity (APR 2002).



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Upon written request, Gulf Power will provide the full text of any of the above sections incorporated herein by reference. Seller warrants and represents that neither it nor any of its Affiliates, agents, contractors or subcontractors is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that Seller or any of its Affiliates, agents, contractors or subcontractors become debarred, suspended or proposed for debarment during the term of this Agreement, Seller will immediately notify Gulf Power verbally and in writing.

### ARTICLE 13: INDEMNIFICATION

13.1 Scope of Indemnity. Each Party (the "Indemnifying Party") expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, agents, officers, directors, employees, members and permitted assigns ("Indemnified Party") against all claims, liability, fines, costs or expenses imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (i) Indemnifying Party's acts and omissions in connection with its performance, or failure to perform obligations or representations and warranties under this Agreement; (ii) Indemnifying Party's activities (including prior uses of third parties) on the Indemnifying Party's respective side of the Point of Delivery; (iii) any negligence or willful misconduct of the Indemnifying Party; and (iv) in the case of Gulf Power as the Indemnifying Party, the exercise of Gulf Power's rights to access or inspect the Facility under Section 4.2.1.

13.2 Notice of Proceedings. An Indemnified Party that becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice prejudices the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

13.3 Survival; No Insurance Limitation. All provisions of this Article 13 shall survive termination of this Agreement, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination. Seller's indemnity obligations contained in this Agreement shall be independent of and shall not be limited by or limit the obligations of Seller under Article 14.



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### ARTICLE 14: INSURANCE

14.1 Insurance Required of Seller. During the Term, Seller shall acquire and maintain, at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in this Article 14.

14.2 Proof of Insurance. Gulf Power may, in its sole discretion, require Seller to deliver to Gulf Power, at any time during the Term, but at least thirty (30) Days after the Effective Date and thereafter annually on the RCOD anniversary, a certificate of insurance certifying Seller's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the state of Florida naming Seller as a named insured and Gulf Power as an additional insured.

14.3 General Terms. All insurance must be with insurers: (i) holding a Best's rating of at least A- VII or equivalent; (ii) whose financial condition and policy forms are acceptable to Company; and (iii) authorized to transact insurance in the state of Florida. Upon commencement of operation of the Facility, the required insurance coverage shall contain a broad form contractual endorsement specifically covering liabilities arising out of or caused by the operation of the Facility or by Seller's failure to maintain the Facility in satisfactory and safe operating condition. Seller's insurance must be primary for all services provided to Gulf Power. Insurance or self-insurance maintained by Gulf Power or other additional insureds is in excess of Seller's insurance, contingent and non-contributory. To the extent allowed by applicable law, Gulf Power, Southern Company and Affiliates, and each of their officers, directors, employees, representatives, and agents, as well as each other person or entity so identified in the Agreement, must be additional insured under the commercial general liability policy. To the extent allowed by applicable law, Seller waives, and must require its insurers to waive, a right of subrogation against Gulf Power, Southern Company, and its Affiliates, and each of their officers, directors, employees, representatives, and agents, for the commercial general liability policy and the workers' compensation policy.

14.4 General Liability Insurance. The insurance policy shall provide the following coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement:

- a. Commercial general liability insurance in an "occurrence" form with bodily injury and property damage combined liability limits of not less than five million dollars (\$5,000,000.00) per occurrence; provided, however, Seller may use umbrella coverage to satisfy the total five million (\$5,000,000.00) coverage requirement (e.g. combine one million dollars (\$1,000,000.00) in commercial general liability insurance as described above with four million dollars (\$4,000,000.00) in umbrella coverage).
- b. Specific coverage for broad form contractual liability including Seller's indemnification obligations under this Agreement and a separation of insured provision.



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- c. Coverage on an "occurrence" basis; provided, however, that coverage may be provided on a "claims made" basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement.

14.5 Statutory Worker's Compensation Insurance. Seller shall acquire and maintain statutory worker's compensation insurance covering Seller's legal liability under the applicable state or federal worker's compensation or occupational disease laws and employer's liability of at least five hundred thousand dollars (\$500,000.00).

14.6 Notice of Change or Cancellation. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify Gulf Power at least thirty (30) Days prior the effective date of any cancellation, with the exception of 10 days' notice for nonpayment of premium. If notice of cancellation is only commercially available to the Seller's attention, then Seller shall forward such thirty (30) Day (or 10 days for non-payment of premium) advance notice to Gulf Power immediately upon receipt. Furthermore, Seller agrees to notify Gulf Power at least thirty (30) Days prior to the effective date of any known material change in the policy.

14.7 Payment of Premiums. Seller shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the Term of this Agreement.

14.8 No Waiver of Liability. The provisions requiring Seller to acquire and maintain insurance under this Agreement shall not be construed as a waiver, restriction or limitation of any liability imposed on Seller under this Agreement, whether or not the same is covered by insurance. It is the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal and contractually assumed liability of Seller, any payments due as a result of such liability shall be made first from the proceeds of such policies.

## ARTICLE 15: FORCE MAJEURE

15.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that prevents a Party, in whole or in part, from performing any of its obligations or satisfying any conditions under this Agreement and that is beyond the reasonable control of such Party and is not caused by such Party's negligence, lack of due diligence, or failure to follow Prudent Industry Practices. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site-specific strike, walkout, lockout or other labor dispute at the Facility; (iii) equipment failure or equipment damage, in the case of the Facility only, unless such equipment failure or equipment damage results directly from an act of God; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services; (v) failures of Seller's contractors, suppliers or vendors, unless such failures are caused by an event that would otherwise constitute a Force Majeure Event if experienced directly by Seller; (vi) unavailability, variability or lack of adequate solar insolation or photovoltaic or solar rays to any extent and for any reason; (vii) Seller's inability to arrange or maintain transmission/distribution service for deliveries to the Point of Delivery; or (viii) any event, including a change in any Legal Requirement or



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accounting standard, that results in requiring Gulf Power to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Gulf Power's financial statements.

15.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and shall not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform such obligations is due to a Force Majeure Event.

15.3 Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

- (i) give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;
- (ii) remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section 15.3 shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (iii) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification from an independent, registered engineer that the Force Majeure Event has been cured.

15.4 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the stated Term.

15.5 Extended Force Majeure Event.

15.5.1 If a Party has reason to believe that a Force Majeure Event, which is preventing the other Party from performing its obligations hereunder will result in a suspension of such performance for a term of six (6) Months or longer (an "Extended Force Majeure Event") (including, in the case of a Force Majeure Event affecting Seller or the Facility, the circumstance where the capability of the Facility to generate and deliver energy is reduced as a result of a Force Majeure Event for a term of six (6) Months or longer), that Party may request that the other Party submit a "Force Majeure Remedy Plan," which the other Party shall submit to the requesting Party within thirty (30) Days of the request. If the Party claiming an excuse under this Section 15 has reason to believe that a Force Majeure Event is an Extended Force Majeure Event, it shall notify the other Party promptly and shall submit a Force Majeure Remedy Plan to the other Party within thirty (30) Days thereafter. The Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions that should permit



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the affected Party to perform its obligations under this Agreement as soon as reasonably practicable.

15.5.2 While a Force Majeure Remedy Plan is in effect, the Party prevented from performing its obligations due to the Extended Force Majeure Event shall provide Monthly status reports to the other Party notifying the other Party of the steps that have been taken to remedy the Extended Force Majeure Event and the expected remaining duration of the Party's inability to perform its obligations.

15.5.3 The Party not prevented from performing its obligations due to the Extended Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the other Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 15.5; (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to cause that Party to be able to perform its obligations hereunder; or (iii) the affected Party remains unable to perform its obligations hereunder twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section 15.5.3, the twelve (12)-Month period need not be continuous if, and only if, each period of suspension of performance comprising the twelve (12)-Month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

15.5.4 Upon termination of this Agreement as provided in this Section 15.5, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

## ARTICLE 16: DISPUTE RESOLUTION

16.1 Notice. Either Party ("Aggrieved Party") shall have the right to give notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party's belief and may describe the recommended options to correct the failure.

### 16.2 Dispute Resolution, Arbitration.

16.2.1 Except for a proceeding in equity under Section 11.3.1(iv), any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such dispute or claim to the mutual satisfaction of the



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Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then upon notice by either Party to resolve the matter by arbitration, any such dispute or claim shall be resolved in accordance with Section 16.2.2.

16.2.2 In the event a dispute is not resolved by senior executives under Section 16.2.1 and a Party provides notice to resolve the matter by arbitration, the Parties agree to arbitrate such dispute in accordance with the following procedures:

16.2.2.1 At the request of either Party upon written notice to the other Party (a "Demand"), the dispute shall be finally settled by binding arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

16.2.2.2 The arbitration shall be conducted by a panel of three (3) arbitrators selected as follows:

(i) The Party initiating arbitration shall nominate one (1) arbitrator at the same time it sends the Demand. The other Party shall nominate one (1) arbitrator within twenty (20) Days of receiving the Demand. The two (2) arbitrators ("Party-Appointed Arbitrators") shall appoint a third arbitrator ("Third Arbitrator"). The Party-Appointed Arbitrators and the Third Arbitrator shall be attorneys who are competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of experience in the electric industry, and shall be impartial and independent of either Party and the Party-Appointed Arbitrators. None of the Party-Appointed Arbitrators or Third Arbitrator shall have provided services to either Party or any of their respective Affiliates within the last five (5) years. Each Party shall pay for the expenses incurred by its Party-Appointed Arbitrator and the costs of the Third Arbitrator shall be divided equally between the Parties.

(ii) If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within thirty (30) Days from initiation of arbitration, then the Third Arbitrator shall be selected by the AAA with due regard given to the selection criteria above and input from Seller, Gulf Power and the Party-Appointed Arbitrators. Parties shall undertake to request the AAA to complete selection of the Third Arbitrator no later than ninety (90) Days from the date of the Demand. Costs charged by the AAA for this service shall be borne by the Parties equally.

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(iii) In the event the AAA should fail to select the Third Arbitrator within ninety (90) Days from the date of the Demand, then either Party may petition a court of competent jurisdiction in Florida to select the Third Arbitrator. Due regard shall be given to the selection criteria above and input from the Parties and the Party-Appointed Arbitrators.

(iv) If, prior to the conclusion of the arbitration, a Party-Appointed Arbitrator or the Third Arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

16.2.2.3 The arbitration shall be held in Pensacola, Florida and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

16.2.2.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator. The arbitrator shall be authorized in his or her discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its consent to service of process by mail is made for the express benefit of the other Party.

16.2.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

16.2.2.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 11.4, or any other multiple or enhanced damages, whether statutory or common law.

16.2.3 The Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 16.



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16.2.4 EACH PARTY UNDERSTANDS AND AGREES THAT ARBITRATION UNDER SECTION 16.2.2 IS MANDATORY AND WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR COURT PROCEEDINGS TO DETERMINE THE MATTERS UNDER SECTION 16.2.2 OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT.

### ARTICLE 17: MISCELLANEOUS

#### 17.1 Assignment, Transfers and Changes of Control.

17.1.1 Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Gulf Power and the owner of the Site (which consent shall not be unreasonably withheld, conditioned or delayed). Any proposed assignee of this Agreement shall (i) agree to assume assignor's obligations under this Agreement, the Ground Lease, the Interconnection Agreement and any other applicable agreements or permits, and (ii) deliver to Gulf Power such assurances regarding its creditworthiness and its ability to perform all obligations of Seller hereunder (including its obligation to provide and maintain Performance Security under Article 5), as Gulf Power may reasonably request, and (iii) cooperate with Gulf Power to comply with any Legal Requirements that result from such assignment. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of Seller with respect to such obligations (and any related interests so transferred), and a release and discharge by Gulf Power of Seller from, and an agreement by Gulf Power not to make any claim for payment, liability, or otherwise against Seller with respect to, such obligations from and after the effective date of the assignment; provided, however, Seller may, without the consent of Gulf Power, assign this Agreement to a financing party for collateral security purposes in connection with any financing or refinancing of the Facility; provided further, that such collateral assignment shall not place any limitation on Gulf Power's rights under this Agreement or expand the liability, risks or obligations imposed on Gulf Power under this Agreement. In connection therewith, Gulf Power agrees to execute a written consent to such collateral assignment in a form acceptable to Gulf Power should the financing party reasonably request such an assignment.

17.1.2 Gulf Power may not assign this Agreement or any portion thereof to any Person other than an Affiliate or partner of Gulf Power who is not subject to a Material Adverse Financial Condition, subject to the jurisdiction of a state regulatory commission without the prior written consent of Seller.

17.2 Other Restrictions. Seller agrees that, without the prior written consent of Gulf Power (which consent shall not be unreasonably withheld, conditioned or delayed) and the owner of the Site, there will be no (i) assignment or transfer of any interest in the Facility, (ii) Change



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of Control Transaction with respect to Seller, or (iii) delegation by Seller of the operational responsibility for the Facility.

17.3 Reimbursement of Gulf Power's Costs. Seller agrees that, in the event Seller assigns or transfers an interest in the Facility or the Agreement, or undergoes a Change of Control Transaction or executes a written consent in favor of Seller's financing party, as such transactions are described in this Article 17, Seller shall be responsible for reasonable and documented costs incurred by Gulf Power, including expenses and legal fees incurred by Gulf Power to effectuate any consent to such proposed transactions, [REDACTED]

17.4 General Requirements. Neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement (including changes in accounting treatment). It shall be reasonable for either Party to condition its consent required by this Article 17 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement or the Facility, that all security required under Article 5 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Gulf Power shall have been provided prior to such disposition.

17.5 No Partnership. Seller and Gulf Power do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

17.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and permitted assigns of Seller and Gulf Power.

17.7 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Gulf Power or Seller to any Person not a party to this Agreement.

17.8 No Gulf Power Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Gulf Power (including any Affiliate of Gulf Power acting as Gulf Power's agent where Gulf Power's agent is given certain authorities pursuant hereto) shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement, provided, however, in the event of an assignment of this Agreement to an Affiliate of Gulf Power pursuant to Section 17.1.2 such assignee will be liable for the assignor's obligations arising under this Agreement from and after the date of assignment.

17.9 Time of Essence; No Waiver. Time is of the essence of this Agreement. Neither Gulf Power's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Gulf Power or Seller of any right or



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remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

17.10 Amendments. This Agreement may be amended only by a written instrument duly executed by both Parties, each of which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

17.11 Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications shall be sent to the respective Parties at the following addresses:

Gulf Power Company

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0335  
Attention: Renewable Energy Manager

With a copy to:

Beggs & Lane  
501 Commendencia Street  
Pensacola, FL 32502  
Attention: Steven Griffin

and if given to Seller shall be addressed to:

Gulf Coast Solar Center III, LLC  
c/o HelioSage, LLC  
117 4<sup>th</sup> Street S.E. – Suite B  
Charlottesville, VA 22902  
Attention: Nelson S. Teague, Jr.

unless Gulf Power or Seller shall have designated a different officer or address for itself by written notice to the other.

17.12 Counterparts; Electronic Copies. This Agreement may be executed by facsimile or PDF (electronic copy) and in counterparts, all of which for all purposes will be deemed to be an original and all of which, taken together, constitutes one and the same instrument.

17.13 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

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17.14 Article and Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17.15 Governing Law: Forum for Disputes. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Florida. The Parties agree that the state and federal courts, as applicable, of the state of Florida shall have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction.

### 17.16 Confidentiality.

17.16.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that it shall not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Gulf Power's retail operating Affiliates, or Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by Legal Requirements.

17.16.2 The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from the FPSC, but acknowledge that certain terms, conditions and provisions of this Agreement may need to be disclosed in connection with Gulf Power's regulatory obligations before the FPSC. No assurance or commitment is made regarding the ability of Gulf Power to obtain confidential treatment from the FPSC. The Parties agree that in the event Confidential Information is required to be disclosed pursuant to Legal Requirements, the Disclosing Party shall make reasonable efforts to obtain protection from disclosure pursuant to the trade secret provisions applicable to such agency or court to ensure that the Confidential Information is protected from public disclosure.

17.16.3 Notwithstanding anything to the contrary in this Section 17.16, Gulf Power shall have the right to disclose the following information publicly or to any other Person without the consent of Seller: (i) all information received by Gulf Power from Seller or otherwise with respect to Environmental Attributes; (ii) the amount of energy purchased under this Agreement; (iii) the estimated Commercial Operation Date; (iv) a forecast of the Seller's energy deliveries under this Agreement; (v) the names of the parties to this Agreement and their Affiliates.



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17.16.4 The terms of Section 17.16 shall survive for a period of two (2) years after the termination or expiration of this Agreement. With respect to any Confidential Information that constitutes a "trade secret" under any applicable law, the Parties' obligations under Section 17.16 shall apply for the life of such trade secret.

### 17.17 Seller Advertising; Public Statements.

17.17.1 Without limiting any other provision of this Agreement, Seller shall submit to Gulf Power all advertising, sales promotion or other publicity matter relating to this Agreement wherein Gulf Power's name or the name of its Affiliate(s) is mentioned, and Seller shall not use or publish such advertising, sales, promotion or other publicity matter without written consent of Gulf Power.

17.17.2 Except as required under any Legal Requirement, any public statement by Seller concerning the transaction described herein shall be reviewed and agreed upon by Gulf Power before release to the public, which agreement shall not be unreasonably withheld, conditioned or delayed.

17.18 Photographs. Upon request, Seller shall provide Gulf Power with photographs of the Facility and the Site for use by Gulf Power for informational purposes and for promoting awareness of the energy purchased under this Agreement.

17.19 Liability. Neither Party shall be responsible for the other Party's performance, non-performance or delay in performance under this Agreement.

17.20 Gulf Power's Agent. Wherever this Agreement requires Seller to provide information, schedules, notice or the like to, or to take direction from, Gulf Power, Seller shall provide information, schedules, notice or the like to, or receive from, Gulf Power or such agent of Gulf Power as Gulf Power may direct from time to time pursuant to a written notice given to Seller in accordance with Section 17.11.

17.21 Entire Agreement. This Agreement (including the attached Appendices) constitutes the entire understanding between the Parties with respect to the purchase and sale of Solar Energy and provision of Environmental Attributes and supersedes any previous agreements between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

17.22 Severability. In the event any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## EXECUTION VERSION

17.23 Transfer of Information Acknowledgement. Seller agrees to execute contemporaneous with the execution of this Agreement, the Transfer of Information Acknowledgement attached as Appendix G, and Gulf Power agrees to the limited use and confidential treatment of such information as set forth in Appendix G.

**[The next page is the signature page.]**



**EXECUTION VERSION**

**IN WITNESS WHEREOF**, Seller and Gulf Power have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**GULF COAST SOLAR CENTER III, LLC**

"Seller"

By: Nelson S. Teague Jr.

Title: Manager

Name: Nelson S. Teague, Jr.

**GULF POWER COMPANY**

"Gulf Power"

By: Michael L. Burroughs

Name: Michael L. Burroughs

Title: VP Generation

ATTEST:

Susan D. Ritenour

Susan D. Ritenour  
Corporate Secretary

## EXECUTION VERSION

### APPENDIX A

#### SOLAR ENERGY PAYMENT CALCULATIONS

The Solar Energy payments to the Seller include Monthly Energy Payments plus an annual true-up payment or credit, determined as set forth below; provided that this Appendix A shall not apply to energy from the Facility prior to COD, which shall be governed by Section 7.2 of the Agreement.

**1. Determination of Monthly Energy Payments.**

The Monthly Energy Payment ("MEP") shall be calculated for each Month as follows:

**A. Determination of Monthly Energy Payments for Months Prior to 2017:**

For energy delivered in each Month prior to October 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * (\text{Monthly Average AER for such Month})$$

For energy delivered in each Month of October, November or December of 2016 (if any), MEP shall be calculated for each such Month as follows:

$$\text{MEP} = \text{MDE} * \text{CEP}$$

**B. Determination of Monthly Energy Payments for Months After 2016:**

For energy delivered in each Month occurring after 2016, MEP shall be calculated for each such Month as follows:

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $\geq 75\%$ , then:

$$\text{MEP} = \text{CEP} * \text{MDE} * \text{EPA}$$

If ADP for the Calendar Year that is prior to the Calendar Year in which such Month occurs is  $< 75\%$ , then:

$$\text{MEP} = \text{MDE} * \text{Prevailing Rate}$$

Notwithstanding the foregoing: (i) if COD occurs in Calendar Year 2016, the MEP for all Months occurring in Calendar Year 2017 shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation; and (ii) if COD occurs in a Calendar Year after 2016, the MEP for all Months of such Calendar Year in which COD occurs shall equal the product of CEP, MDE and EPA, and EPA shall be equal to 100% for purposes of such calculation.



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### C. Certain Definitions:

The following terms have the respective meanings set forth as follows:

**ADE** = Annual Delivered Energy which, for a given Calendar Year, is the amount of Solar Energy, in MWh, delivered by Seller to Gulf Power at the Point of Delivery plus any Deemed Delivered Energy ("DDE") during such Calendar Year pursuant to this Agreement (provided that for purposes hereof, Annual Delivered Energy shall exclude any energy delivered prior to COD, and there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**ADP** = Annual Delivery Percentage for a given Calendar Year, which shall be the ratio of the sum of the Annual Delivered Energy ("ADE") for such Calendar Year and any Curtailed Energy ("CE") for such Calendar Year to the Annual Energy Contract Amount ("AECA") for such Calendar Year, i.e.:

$$\text{ADP} = (\text{ADE} + \text{CE}) / (\text{AECA})$$

**AECA** = Annual Energy Contract Amount for a given Calendar Year, as determined in Appendix F.

**AER** = the Avoided Energy Rate, which shall be, for any given hour, the amount (in \$/MWh) that is equal to the avoided cost of generation on the Gulf Power territorial system for such hour as such is calculated by or on behalf of Gulf Power pursuant to FPSC Rule 25-17.0825.

**CE** = Curtailed Energy which, for a given Calendar Year, shall equal the amounts of Solar Energy not delivered during such Calendar Year that specifically constitute "Curtailed Energy" pursuant to Section 7.7.1, Section 7.8 and Section 7.9.2 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Curtailed Energy attributable to any period prior to COD).

**CEP** = the Contract Energy Price for the Calendar Year in which the applicable Month of energy deliveries occurs, as set forth in Table A below:

**Table A**

**Contract Energy Price\***

Calendar Year	CEP ** (\$/MWh)
2016	
2017	

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2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			



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2042***			
2043***			
Subsequent Calendar Years (if applicable)	****		

\*Note – Prices for Calendar Years that do not occur in whole or in part during the period beginning with the Month when CEP is to be used to determine MEP through the end of the Term (as may be extended under Section 3.1.1) will not apply.

\*\*Note – The prices set forth in Table A are based on the presumption that Gulf Power will enter into a total of three (3) solar purchased power agreements with Seller or its Affiliates and that all three (3) agreements will receive regulatory approval from the FPSC. In the event that only two (2) solar purchased power agreements are approved by the FPSC, the prices set forth in Table A will increase by 1.5%. In the event that only one (1) solar purchased power agreement is approved by the FPSC, the prices set forth in Table A will increase by 2.5%.

\*\*\*Note – If applicable.

\*\*\*\* Note – If the Agreement is extended pursuant to section 3.1.1, CEP for each Calendar Year following 2043 shall be equal to CEP for the immediately previous Calendar Year multiplied by [REDACTED]

**DDE** = Deemed Delivered Energy which, for a given Calendar Year, shall be equal to the amount of Solar Energy not delivered during such Calendar Year that specifically constitutes “Deemed Delivered Energy” under Section 7.9.3 of the Agreement, and as determined consistent with Section 7.10 of the Agreement (provided that for purposes hereof, there shall be no amounts of Deemed Delivered Energy attributable to any period prior to COD).

**EPA** = The Energy Payment Adjustment shall be calculated in accordance with Table B below based on the ADP for the Calendar Year that is prior to the Calendar Year in which the Month of applicable energy deliveries occurs. Gulf Power shall apply the Energy Payment Adjustment to the Monthly Energy Payment for the duration of the current Calendar Year.

Table B

Annual Delivery Percentage for the prior Calendar Year ("ADP")	Energy Payment Adjustment ("EPA")
ADP $\geq$ 90%	
90% > ADP $\geq$ 85%	
85% > ADP $\geq$ 75%	

**MDE** = the Monthly Delivered Energy is the amount of Solar Energy, in MWh, delivered by Seller from the Facility to Gulf Power at the Point of Delivery pursuant to this Agreement during the applicable Month plus any Deemed Delivered Energy determined under Section 7.9.3 of this Agreement for the applicable Month.

**Monthly Average AER** = for a given Month, the average hourly AER over all hours of such Month (regardless of when energy deliveries commenced or occurred under this Agreement during such Month).

**Prevailing Rate** = the lower of: (i) 70% of the prevailing CEP; or (ii) the Monthly Average AER for the applicable Month of energy deliveries.

## 2. Determination of Annual True-up Payment or Credit.

At the end of each Calendar Year, a true-up payment or credit will be calculated for such Calendar Year to true-up the total Monthly Energy Payments made to the Seller for that Calendar Year to the target payment shown in Table C below for such Calendar Year ("Target Payment"); provided, however: (i) if COD occurs in Calendar Year 2016, such calculation will not be made for 2016, but will be made commencing with Calendar Year 2017 after the end of such Calendar Year 2017; (ii) if COD occurs in a Calendar Year after 2016, such calculation will be made commencing with the Calendar Year in which COD occurred after the end of such Calendar Year; and (iii) a final true-up payment or credit will be calculated at the end of the last Annual Period in order to true-up the total payments made to the Seller for the Calendar Year in which the last Annual Period expires to the Target Payment for such Calendar Year. The true-up payment or credit for a given Calendar Year shall be equal to the Target Payment for such Calendar Year minus the sum of the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year. By way of further clarification, if the Target Payment for a Calendar Year is greater than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall receive the difference (i.e., the amount of underpayment) as a true-up payment pursuant to Section 8.1.1 of the Agreement. If the Target Payment for a Calendar Year is less than the actual Monthly Energy Payments made to Seller for each Month of that Calendar Year, then Seller shall remit to Gulf Power a credit (i.e., the amount of overpayment) for such difference pursuant to Section 8.1.1 of the Agreement.



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Table C

Annual Delivery Percentage for the Calendar Year ("ADP")	Target Payment for the Calendar Year
$ADP \geq 110\%$	
$110\% > ADP \geq 90\%$	
$90\% > ADP \geq 85\%$	
$85\% > ADP \geq 75\%$	
$75\% > ADP \geq 0\%$	

For purposes of this Section 2, the following terms shall have the respective meanings set forth below:

**ADP** = Annual Delivery Percentage (as defined above) for the Calendar Year (or applicable portion thereof) for which the Target Payment is being determined.

**ADE** = Annual Delivered Energy (as defined above) for the Calendar Year for which the Target Payment is being determined.

**CEP** = the Contract Energy Price (as defined above) for the Calendar Year for which the Target Payment is being determined.

**Excess ADE Payment** = the Target Payment in the event the ADP is  $\geq 110\%$  of the Annual Energy Contract Amount for the Calendar Year shall reflect the sum of:

1.

2.

**Excess ADE Payment** =

**AAC** = the simple average of the hourly AERs over all hours of the Calendar Year.

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### APPENDIX B

#### FORM OF LETTER OF CREDIT

\_\_\_\_\_, 20\_\_

[Name and Address  
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME OF ACCOUNT PARTY] ("Account Party"), with respect to the Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Account Party] and you ("Beneficiary"), as may be amended (the "PPA"), our irrevocable standby letter of credit no. \_\_\_\_\_ (the "Standby Letter of Credit") whereby we hereby irrevocably authorize you to demand payment from us, in accordance with the terms and conditions hereinafter set forth, an amount not to exceed \_\_\_\_\_ United States Dollars (U.S. \$\_\_\_\_\_).

Funds against this Standby Letter of Credit are available to you against your written demand(s) for payment delivered to us, referring thereon to the number and date of this Standby Letter of Credit, accompanied by a written and completed certificate executed by you in the form attached as Annex 1 hereto, with appropriate insertions. Multiple, partial demands may be made hereunder. Such available funds shall not directly or indirectly constitute funds or collateral deposited with or for the bank account by the [Account Party], or pledged with or for the bank's account by the [Account Party].

Delivery of such demands and such certificates shall be made on any day which is a business day for us at or prior to 5:00 p.m. (Atlanta Time) at our office located at \_\_\_\_\_, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such demand and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) business days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by telecopy or e-mail when promptly confirmed by written demand; however, actual disbursement of funds pursuant to a demand presented by telecopy or e-mail shall not occur until we are presented with the original Standby Letter of Credit.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (Atlanta time) on \_\_\_\_\_, 20\_\_. It is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date (but in no event later than \_\_\_\_\_, 20\_\_), unless we notify you, in writing, by certified or registered mail at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for such additional period.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Payment of demands made under this Standby Letter of Credit is not subject to any condition or qualification. This Standby Letter of Credit sets forth in



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full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be affected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 2 hereto, with appropriate insertions. Upon such presentation we shall forthwith issue an irrevocable letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the International Standby Practices (herein referred to as the "ISP98"). This Standby Letter of Credit shall be deemed to be a contract made under the laws of the state of Florida and shall, as to matters not governed by the ISP98, be governed by and construed in accordance with the laws of the state of Florida.

Yours very truly,

[ISSUING BANK]

**EXECUTION VERSION**

**ANNEX 1**

**CERTIFICATE**

Re: Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Name of Account Party] ("[Account Party]") and [Name of Beneficiary] ("[Beneficiary]") (the "PPA").

The undersigned, each a duly authorized officer of [Beneficiary], hereby certify to [ISSUING BANK] (the "Bank") with reference to irrevocable standby letter of credit no. (the "Standby Letter of Credit"), issued by the Bank for the account of [Account Party] in favor of [Beneficiary] that:

(1) (Insert one of the following, as applicable)

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to demand payment under the Standby Letter of Credit in the amount of the demand accompanying this certificate (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the expiration date of the Standby Letter of Credit for an additional period past its then expiration date and the Account Party has failed to deliver a substitute letter of credit in accordance with the terms of the Agreement.

(2) The undersigned are each a duly elected and incumbent officer of [Beneficiary] and are authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of this      day of      , 20      .

[BENEFICIARY]

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

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

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

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



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**ANNEX 2**

**INSTRUCTION TO ASSIGN IN ENTIRETY**

\_\_\_\_\_, 20\_\_

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

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

(Name of Assignee)

(Address)

all rights of the undersigned beneficiary to demand payment under the above Standby Letter of Credit in its entirety.

By this assignment, all rights of the undersigned beneficiary in such Standby Letter of Credit are transferred to the assignee and the assignee shall hereafter have the sole rights as beneficiary thereof.

The Standby Letter of Credit is returned herewith and in accordance therewith we ask you to issue a new irrevocable Standby Letter of Credit in favor of the assignee with provisions consistent with the Standby Letter of Credit.

Very truly yours

[Beneficiary]

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

Title:

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

Title:

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### APPENDIX C

#### FORM OF GUARANTY

THIS GUARANTY AGREEMENT (the "Guaranty"), dated and effective as of \_\_\_\_\_, 20\_\_, is made and entered into by \_\_\_\_\_ (the "Guarantor") in favor of the \_\_\_\_\_ (the "Beneficiary").

**WHEREAS** Beneficiary and \_\_\_\_\_ (the "Company"), [a subsidiary of the Guarantor], have entered into that certain Energy Purchase Agreement dated as of \_\_\_\_\_, 20\_\_, as may be amended (the "Agreement");

**WHEREAS**, the Beneficiary has required, as an inducement to enter into the Agreement, that Guarantor deliver to the Beneficiary this Guaranty or other Performance Security when required under the Agreement;

**WHEREAS**, the Guarantor qualifies as a Seller Guarantor under the Agreement and this Guaranty qualifies as Performance Security under the Agreement; and

**WHEREAS**, the Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Agreement.

**WHEREAS**, for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

#### ARTICLE 1:DEFINITIONS

1.1 Definitions. Unless otherwise defined in this Guaranty, capitalized terms have the meanings specified or referred to in the Agreement.

#### ARTICLE 2:GUARANTY

2.1 Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment and performance of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty shall in no event exceed the amount of Performance Security required to be provided by Seller from time to time pursuant to Section 5.1 of the Agreement. If Company fails to pay or perform any Guaranteed Obligation, then Guarantor will immediately pay for or perform or cause the performance of such obligation upon demand by the Beneficiary.

2.2 Guaranty Absolute. (1) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Agreement, regardless of any law or regulation now or hereafter in effect in any



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jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and performance and not of collection. The obligations of the Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

- a. any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations;
- b. any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries;
- c. any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;
- d. any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);
- e. any failure of the Beneficiary to commence an action against Company;
- f. any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations; or
- g. except as provided in Section 2.3(c), any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.



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(2) No action which the Beneficiary shall take or fail to take in connection with the Guaranteed Obligations, or any security for the payment or performance of any of the Guaranteed Obligations, nor any course of dealing with Company or any other person, shall release Guarantor's obligations hereunder, affect this Guaranty in any way, or afford Guarantor any recourse against the Beneficiary.

(3) In the case of an Event of Default under the Agreement or with regard to any of the Guaranteed Obligations, Guarantor hereby consents and agrees that the Beneficiary shall have the right to enforce its rights, powers, and remedies thereunder or hereunder or under any other instrument now or hereafter evidencing, securing, or otherwise relating to the Guaranteed Obligations, and apply any payments or credits received by the Company or Guarantor or realized from any security, in any manner and in any order as the Beneficiary, in its sole discretion, shall see fit, and all rights, powers, and remedies available to the Beneficiary in such event shall be nonexclusive and cumulative of all other rights, powers, and remedies provided thereunder or hereunder or by law or in equity. If the Guaranteed Obligations are partially paid by reason of the election of the Beneficiary, its successors or assigns, to pursue any of the remedies available to the Beneficiary, or if such indebtedness is otherwise partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the Guaranteed Obligations even though any rights which Guarantor may have against the Company may be destroyed or diminished by the exercise of any such remedy.

### 2.3 *Waivers and Acknowledgments.*

(a) Guarantor hereby waives promptness, diligence, presentment, demand of payment, acceptance, notice of acceptance, protest, notice of dishonor and any other notices with respect to any of the Guaranteed Obligations and this Guaranty.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. The provisions of this Guaranty shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Agreement.

(1) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder; provided, however, that Guarantor shall have the same defenses available to the Company with respect to any payment obligations arising under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company.

19.4 *Subrogation.* Notwithstanding any payment or payments or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without



## EXECUTION VERSION

limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly paid or performed in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations shall not have been indefeasibly paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

### ARTICLE 3: REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

3.1 *Organization.* The Guarantor is a [ ] duly organized, validly existing and in good standing under the laws of the state of [ ].

3.2 *Authorization; No Conflict.* The execution and delivery by the Guarantor of this Guaranty, and the performance by the Guarantor of its obligations hereunder (i) are within the Guarantor's [ ] powers, (ii) have been duly authorized by all necessary [ ] action, (iii) do not contravene its [ ] or any law or regulation applicable to or binding on the Guarantor or any of its properties and (iv) do not require the consent or approval of any person which has not already been obtained or the satisfaction or waiver of any conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

3.3 *Enforceability.* This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, dissolution, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3.4 *No Bankruptcy Proceedings.* There are no bankruptcy proceedings pending or being contemplated by Guarantor or, to its knowledge, threatened against it.

3.5 *No Legal Proceedings.* There are no legal proceedings that would be reasonably likely to materially adversely affect Guarantor's ability to perform this Guaranty.

### ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until all of the Guaranty

## EXECUTION VERSION

Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

4.2 *Notices.* All notices, requests, demands and other communications which are required or may be given under this Guaranty shall be in writing and shall be deemed to have been duly given when actually received if (a) personally delivered; (b) transmitted by facsimile, electronic or digital transmission method; or (c) if sent by certified or registered mail, return receipt requested. In each case notice shall be sent:

- (i) if to the Beneficiary:

[Company, address, c/o person]

- (ii) if to the Guarantor:

[Company, address, c/o person]

or to such other place and with such other copies as the Beneficiary or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4.2. Delivery by facsimile of an executed counterpart of a signature page to any amendment or waiver of any provision of this Guaranty shall be effective as delivery of an original executed counterpart thereof.

4.3 *Delay and Waiver.* No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or



## EXECUTION VERSION

occasioned by any breach by the Guarantor of any of its obligations under this Guaranty should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

4.6 *Headings.* The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

4.7 *Governing Law; Consent to Jurisdiction.* (1) This Guaranty shall be construed and interpreted, and the rights of the parties determined, in accordance with the law of the state of [Florida], without giving effect to principles of conflicts of law that would require the application of the laws of another jurisdiction.

(2) Each party hereto irrevocably and unconditionally (i) agrees that the exclusive jurisdiction for any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the United States District Court for the Northern District of Florida, or if jurisdiction is not available in the United States District Court for the Northern District of Florida, in the Circuit Court in Pensacola, Florida; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection which such party may have to the laying of venue of any such suit, action or proceeding in any such court.

(3) THE GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO, THIS GUARANTY, OR THE ACTIONS OF THE BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

4.8 *Severability.* Any provision of this Guaranty that shall be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

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

**[Company]**

By: \_\_\_\_\_  
Name:  
Title:



## APPENDIX D

### CERTIFICATION OF WHETHER THE AGREEMENT WILL REQUIRE DECONSOLIDATION BY SELLER WITH RESPECT TO VARIABLE INTEREST ENTITY

**AGREEMENT** – Energy Purchase Agreement dated October \_\_, 2014 between Gulf Power Company (“Gulf Power”), and Gulf Coast Solar Center III, LLC (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that the Agreement WILL ( )/WILL NOT ( X ) require the Seller, based on U.S. Generally Accepting Accounting Procedures in effect as of the date of this certificate, to deconsolidate on its books and records any assets, liabilities, cash flow, profits or losses of Seller as a result of the Gulf Power being determined to be the primary beneficiary. My determination of the most likely accounting treatment of this transaction results from my personal consideration after necessary discussions with relevant officers of Accounting Standards Codification (“ASC”) Topic 810, Consolidation, and the following factual matters:

- 1) Seller’s accounting policies, procedures, and internal controls are sufficient to provide us with an appropriate basis for confirming the information contained herein.

X Yes

       No (please explain)

*Explain:*

- 2) Seller qualifies for one of the scope exceptions listed in paragraphs 810-10-15-12 and 810-10-15-17 of ASC Topic 810. Please explain.

       Yes

X No

*Explain:*

- 3) Seller is financed with equity equal to or greater than ten percent (10%) of the Seller's total assets per paragraphs 810-10-25-45 to 47 of ASC Topic 810.

☒ Yes

☐ No

- 4) The Agreement revenues correlate with fluctuations in Seller's operating cash flows (operating expenses). Please explain.

☐ Yes

☒ No

Explain: On an annual basis, both revenues and O&M expenses are expected to be predictable and relatively steady throughout the life of the power purchase agreement; however, they do not necessarily correlate. For example, in the event of unexpected system maintenance that would require temporary system downtime and would also require exceptional O&M expense, the correlation between O&M expense and revenue from Gulf Power would be inverted during such a time (higher expenses and lower revenues).

- 5) The Agreement reduces variability in the fair value of Seller's assets, for example by absorbing fuel or electricity price risk. Please explain.

☒ Yes

☐ No

Explain: The Power Purchase Agreement provides the Seller with assurance that the power produced by this asset will be sold to Gulf Power at a predictable rate for the term of the PPA. This substantially reduces the variability of the asset value during the life of the PPA due to the predictability of the pricing as outlined in the PPA.

- 6) The Agreement term is for greater than 50% of the remaining economic life of the unit.

☒ Yes

☐ No

- 7) The Agreement is for substantially all of the proposed Seller's productive output.

☒ Yes

☐ No



8) Gulf Power and/or its affiliates participated significantly in the design or redesign of the Seller's Facility.

       Yes

  X   No

9) The percentage that the Facility's fair value represents, of the fair value of the proposed Seller's total assets, is approximately;

100%

10) The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

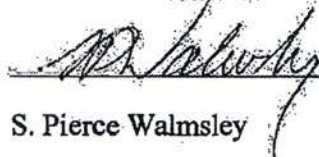
  X   Yes

       No

#### Confirmation

The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.

By:



Name: S. Pierce Walmsley

Title: CFO

Company: HelioSage, LLC

Date: October 27, 2014

APPENDIX E

FACILITY DESCRIPTION AND SITE

The land and rights-of-way and related equipment and facilities of the 50 MW Facility known as Saufley Field Solar Center will be located on approximately 550 acres at Navy Outlying Landing Field (NOLF) Saufley in Escambia County. [REDACTED]

The Facility shall include a switching station located on Seller's side of the Point of Change in Ownership ("Project Switching Station"). Seller shall design, engineer, procure, construct and install the Project Switching Station in accordance with the following:

- (1) Seller shall design, engineer, procure, construct and install the Project Switching Station using standards and specifications provided in advance by Gulf Power (including EMF requirements, standards to meet hurricane wind loading conditions, and all NESC standards);
- (2) Seller's design, engineering, procurement, construction and installation of the Project Switching Station shall comply with all requirements of law;
- (3) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of the design, engineering, procurement, construction and installation of the Project Switching Station (including prior approval of materials used for insulators, transformers, poles and other equipment), including all changes in scope;
- (4) Seller shall obtain Gulf Power's prior approval (which shall not be unreasonably withheld, conditioned or delayed) of all of Seller's contractors and suppliers with respect to the Project Switching Station;
- (5) Prior to commencement of construction, Seller shall provide to Gulf Power a schedule for construction of such facilities, and shall promptly respond to requests for information from Gulf Power;
- (6) At any time during construction, Gulf Power shall have the right to conduct inspections of such facilities;
- (7) At any time during construction, should any phase of the design, engineering, procurement, construction or installation of the Project Switching Station not meet the standards and specifications provided by Gulf Power, Seller shall be obligated to remedy deficiencies in the relevant portion of such facilities;
- (8) Seller shall indemnify Gulf Power for claims against Gulf Power arising from the design, engineering, procurement, construction and installation of the Project Switching Station;



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(9) As a condition to the operation of the Project Switching Station, Gulf Power shall approve and accept for operation and maintenance such switching station;

(10) Seller shall deliver to Gulf Power "as-built" drawings (in Gulf Power's standard format), information, and any other documents that are reasonably required by Gulf Power to assure that such facilities are built to the standards and specifications required by Gulf Power.

APPENDIX F

ANNUAL ENERGY CONTRACT AMOUNT

The Annual Energy Contract Amount for each Calendar Year shall be determined as set forth in this Appendix F.

1. If COD Occurs in Calendar Year 2016.

If COD occurs in Calendar Year 2016, then the following shall apply:

- (i) There shall be no Annual Energy Contract Amount for 2016.
- (ii) The Annual Energy Contract Amount for Calendar Year 2017 shall be [REDACTED] MWh.
- (iii) For each Calendar Year after 2017, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED])$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{Previous Year AECA} * (1 - [REDACTED]) * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment})$$

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).



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Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

### 2. If COD Occurs in Calendar Year 2017 or a Subsequent Calendar Year.

If COD occurs in Calendar Year 2017 or a subsequent Calendar Year, then the following shall apply:

- (i) The Annual Energy Contract Amount for such Calendar Year in which COD occurs shall be determined as follows:

$$AECA = \text{[REDACTED]} \text{ MWh} * (\text{Pro Rata Monthly Adjustment} + \text{Pro Rata Daily Adjustment}).$$

Where:

Pro Rata Monthly  
Adjustment =

the percentage in Table F-3 below that corresponds to the Month that commences immediately after the Month in which COD occurs; provided that if COD occurs in December, then the Pro Rata Monthly Adjustment shall be equal to zero (0).

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which COD occurs; multiplied by (ii) the ratio of the number of Days in such Month that occur on and after COD in such Month to the total number of Days in such Month.

- (ii) For the Calendar Year immediately following the Calendar Year in which COD occurs, the Annual Energy Contract Amount shall be determined as follows:

$$AECA = \text{[REDACTED]} \text{ MWh} * (1 - \text{COD Year Adjustment}).$$

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Where:

COD Year Adjustment = Post COD Months \* [REDACTED]

Post COD Months = The number of Months occurring after COD but prior to the first January 1 occurring after COD (excluding the Month in which COD occurs).

For example, if COD occurs on June 15, 2017, the Annual Energy Contract Amount for 2018 shall be equal to [REDACTED] \* (1 - 6 \* [REDACTED]).

- (iii) For each subsequent Calendar Year, except for the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED])

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

- (iv) For the Calendar Year in which the last Annual Period of the Term expires, the Annual Energy Contract Amount shall be determined as follows:

AECA = Previous Year AECA \* (1 - [REDACTED]) \* (Pro Rata Monthly Adjustment + Pro Rata Daily Adjustment)

Where:

Previous Year AECA = the Annual Energy Contract Amount for the previous Calendar Year

Pro Rata Monthly Adjustment = the percentage in Table F-1 below that corresponds to the Month that ended immediately prior to the Month in which the last Annual Period of the Term expires; provided that if the last Annual Period of the Term expires in January, then the Pro Rata Monthly Adjustment shall be equal to zero (0).



## EXECUTION VERSION

Pro Rata Daily  
Adjustment =

the product of: (i) the percentage set forth in Table F-2 below that corresponds to the Month in which the last Annual Period expires; multiplied by (ii) the ratio of the number of Days in such Month that occur prior to such expiration to the total number of Days in such Month.

**Table F-1**

Month	Percentage
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	

**Table F-2**

Month	Percentage
January	
February	

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March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

**Table F-3**

<b>Month</b>	<b>Percentage</b>		
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			



## EXECUTION VERSION

### APPENDIX G

#### TRANSFER OF INFORMATION ACKNOWLEDGEMENT

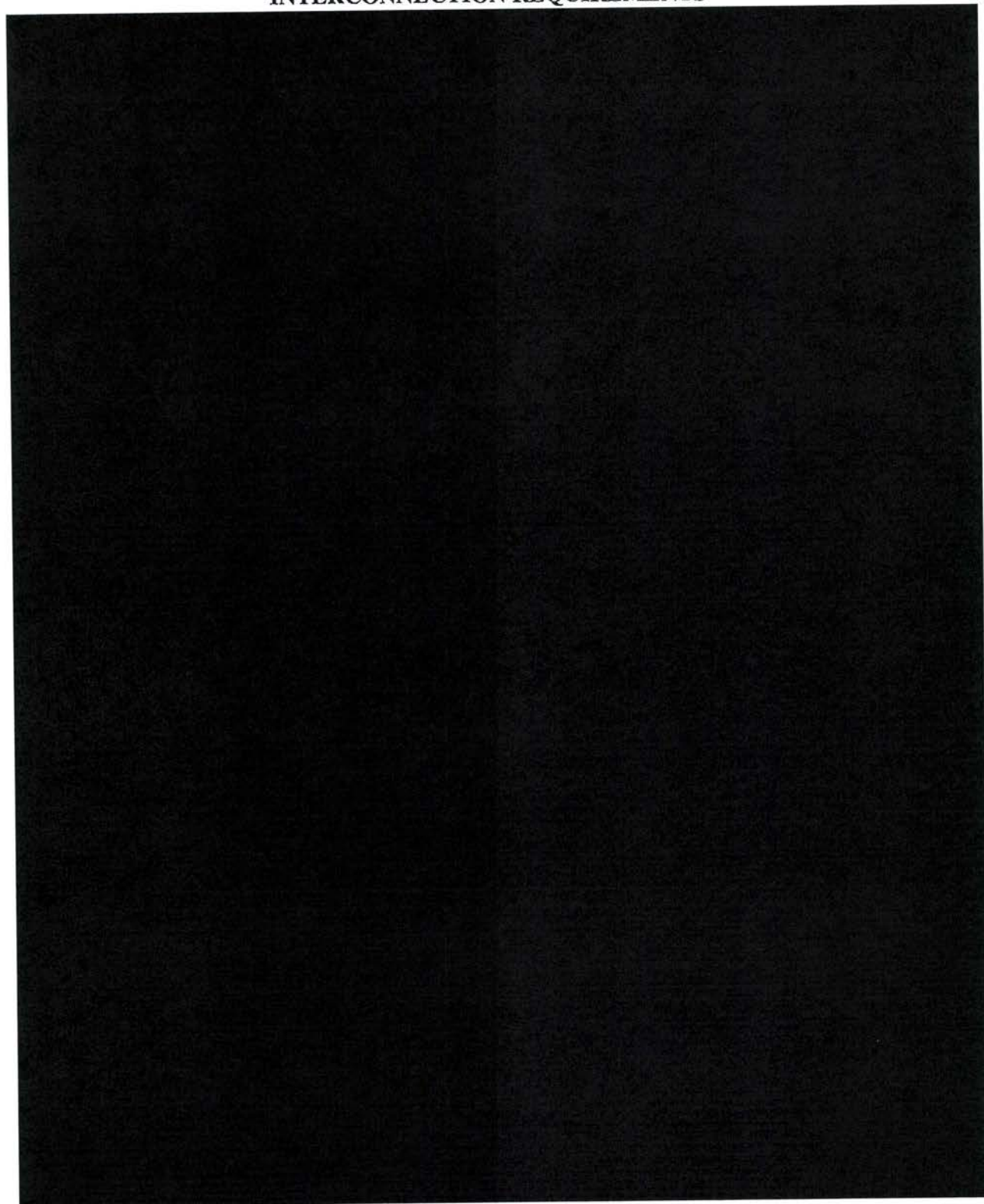
Gulf Coast Solar Center III, LLC ("Seller") and Gulf Power Company ("Gulf Power") have entered into that certain Energy Purchase Agreement between Seller and Gulf Power Company ("Agreement") dated as of 11/7, 2014. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission's Standards of Conduct will be provided by Seller to Gulf Power and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Gulf Power Company, Georgia Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf Power Company's system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and energy affiliate/wholesale marketing unit functions under the Standards of Conduct.

The individuals within the Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Gulf Power's system operations and dispatch functions). Seller understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission's Standards of Conduct. Seller's provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of Southern Company. Seller also acknowledges that Seller is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of Seller's consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be energy affiliates/wholesale marketing units under the Standards of Conduct.

Acknowledged on behalf of Seller:

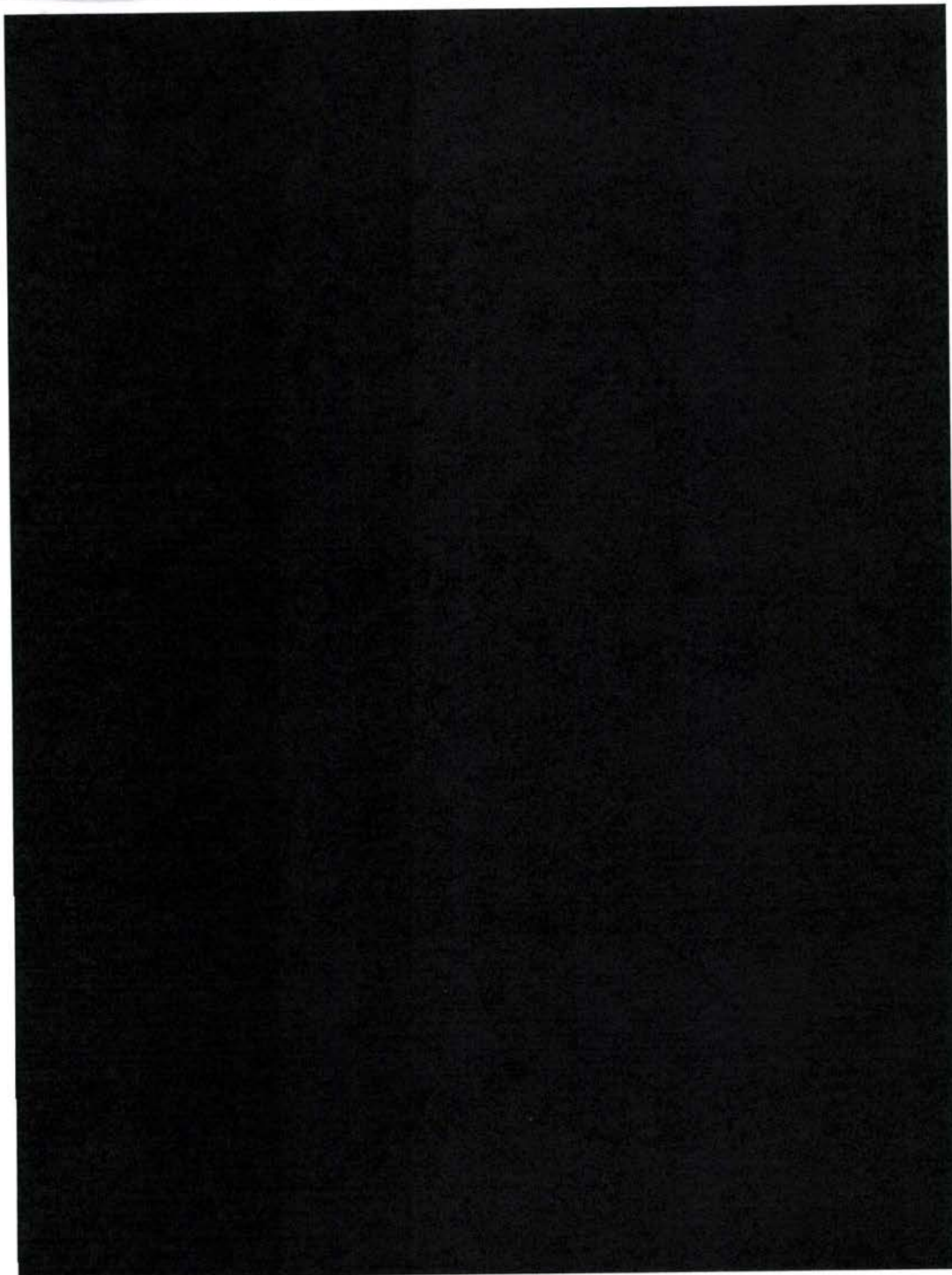
By: Nelson S. Teague, Jr.  
Name: Nelson S. Teague, Jr.  
Date: 11/09/14

APPENDIX H  
INTERCONNECTION REQUIREMENTS

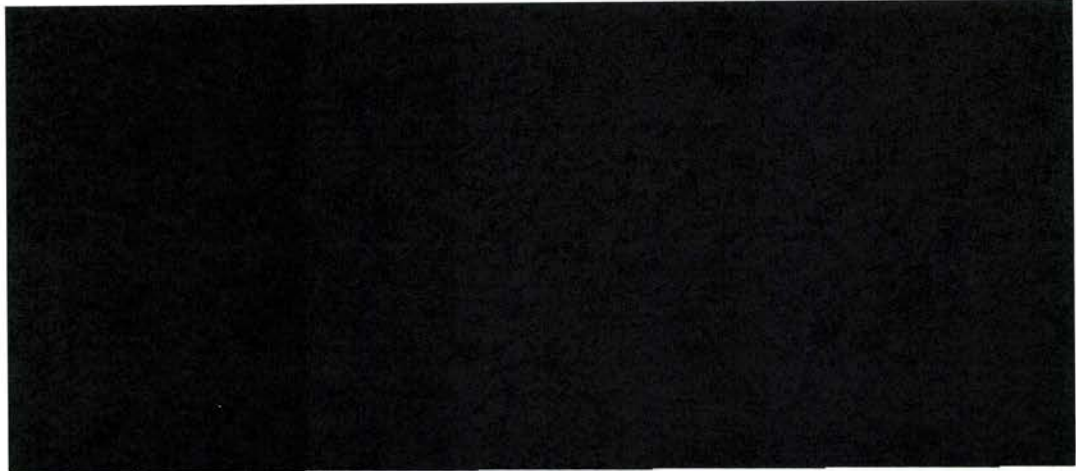




**EXECUTION VERSION**



## EXECUTION VERSION



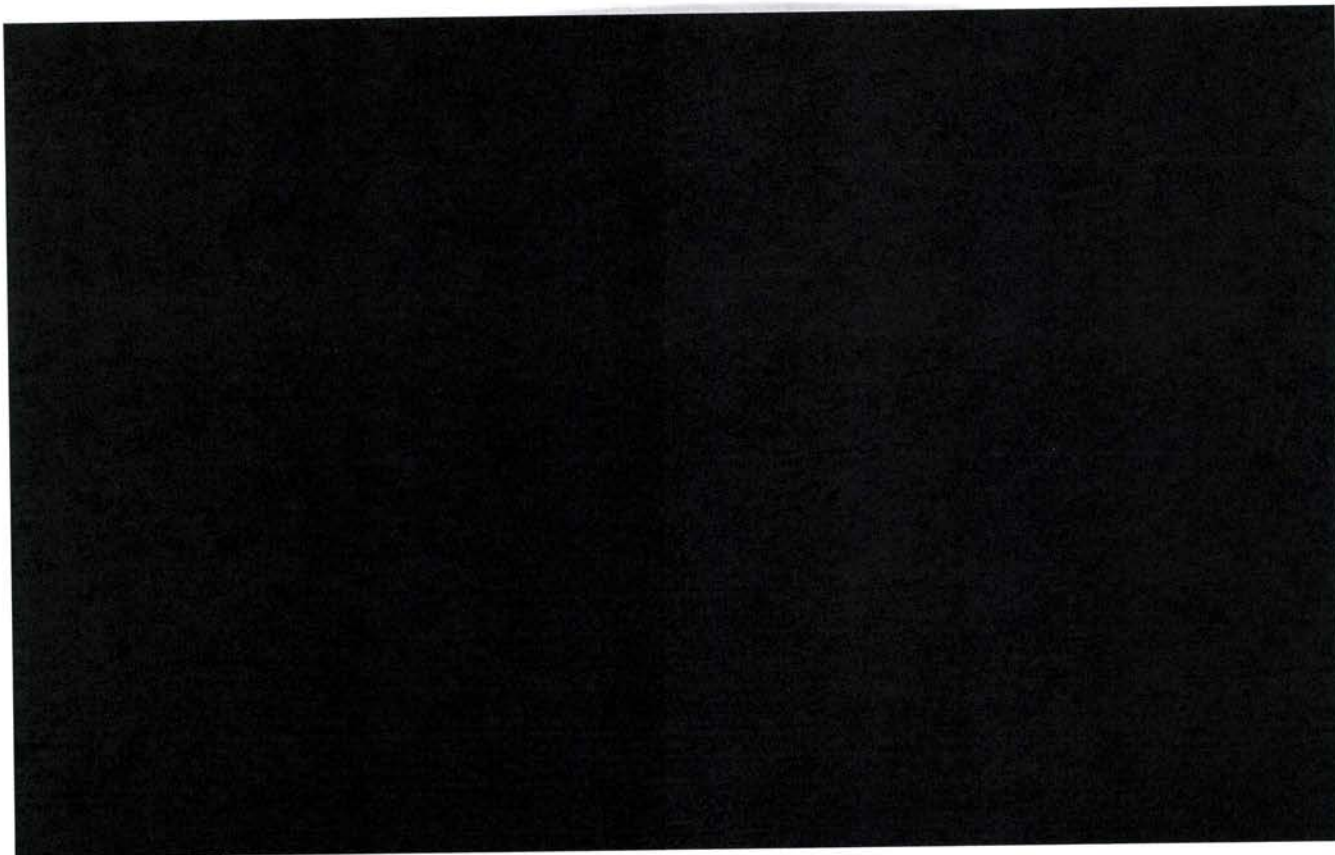
### Qualifying Facility Status

Throughout the Term of this Agreement and the term of the Interconnection Agreement, Seller shall cause the Facility to be a Qualifying Facility. Seller shall obtain, and maintain at all times during the Term of this Agreement and the term of the Interconnection Agreement, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities. For purposes hereof, "Qualifying Facility" has the meaning defined in Section 292.101(b)(1) of the regulations promulgated under PURPA, 18 C.F.R. Part 292.



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### Interconnection Diagram\*



\*Final interconnection diagram may be modified by Gulf Power in order to reflect the results of the interconnection studies and process under Article 6.

APPENDIX I

SALE AND PURCHASE OF THE FACILITY

1. Determination of Fair Market Value and Due Diligence:

In order for Gulf Power to make a determination of whether to exercise its option to purchase the Facility, from time to time, Gulf Power shall have the right to conduct due diligence with respect to the Facility and/or require the Parties to [REDACTED] (as defined in Section 6 below).

At Gulf Power's request to conduct due diligence, Seller shall provide Gulf Power and its Representatives with all such information relating to the Facility and access to the Facility as requested by Gulf Power, including: (i) all agreements that relate to the construction, procurement, ownership, operation or maintenance of the Facility; (ii) all information regarding maintenance and outages of the Facility; (iii) all information regarding claims made against Seller with respect to the Facility or the Facility; (iv) all information regarding claims made by Seller with respect to the Facility; (v) all manufacturers' and suppliers' guidelines and recommendations relating to the Facility; (vi) all operating and maintenance logs and records, insurance claims and any other records relating to the construction, procurement, operation and maintenance of the Facility; (vii) all information relating to Consents that pertain to the Facility; and (viii) all drawings, instructions, manuals, guidelines and similar items with respect to the Facility. If Gulf Power requires [REDACTED] at any time(s), [REDACTED] that would apply if Gulf Power were to thereafter exercise its option to purchase the Facility, as defined in Section 6 of this Appendix I. There shall not be a limit on the number of times that Gulf Power [REDACTED]

2. Exercise of Option:

After conducting due diligence on the Facility and after [REDACTED], if Gulf Power desires to exercise its option to purchase the Facility, Gulf Power shall provide notice to Seller of such exercise. After Gulf Power exercises the option, Gulf Power shall be entitled to continue to conduct due diligence with respect to the Facility, and Seller shall continue to provide Gulf Power with all information and access with respect to the Facility, consistent with Section 1 of this Appendix I.

3. Purchase and Sale:

If Gulf Power provides notice to Seller exercising its option to purchase the Facility, the Parties shall execute a bill of sale and assignment and any other necessary documents in accordance with this Appendix I, which shall provide for the transfer and sale of the Assets (as defined below) to Gulf Power on a date mutually agreed upon by the Parties. Such bill of sale, assignment and other



## EXECUTION VERSION

documents shall include terms, conditions, representations and warranties that are customary for similar transactions and consistent with the following provisions of this Appendix I.

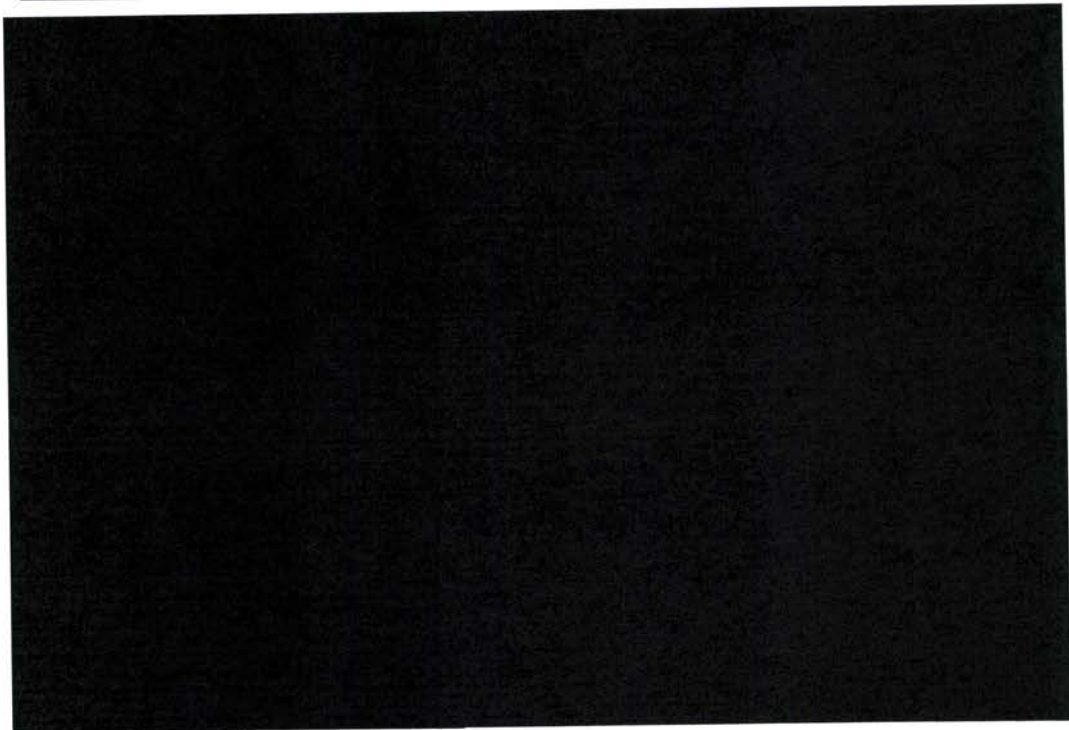
4. Structure of Transaction:

The transaction shall be structured as an acquisition of assets, not of ownership interests or shares in any entity. Gulf Power shall acquire: (i) the Facility, including all equipment, components, materials, machinery, and apparatus thereof; (ii) all other assets and property (whether real or otherwise) of Seller necessary or desirable to own, control and operate the Facility; (iii) to the extent permitted by Legal Requirements and subject to any required consents and approvals, all Consents necessary or desirable to own, control and operate the Facility; and (iv) to the extent requested by Gulf Power, all agreements to which Seller is a party relating to the assets to be acquired and which are necessary or desirable to own, control and operate the Facility (including this Agreement and the Ground Lease); provided that Seller shall ensure that all such agreements can be transferred to Gulf Power without further consents or approvals ("Assets").

5. Retention of Liabilities by Seller:

Seller shall be responsible for all liabilities and obligations relating to the Assets that arise due to any event or occurrence prior to the date of transfer of the Assets or that relate to or arise out of the ownership or operation of the Assets up to the date of transfer.

6. Purchase Price:



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7. Liens and Encumbrances:

All Assets shall be transferred to Gulf Power free and clear of all liabilities, obligations, liens, claims and other encumbrances as evidenced, to Gulf Power's satisfaction, through written releases or other necessary documents.

8. Asset Warranties:

Seller shall cause all warranties and guarantees with respect to the Assets to be subrogated, assigned or otherwise made available to Gulf Power (provided that Seller shall ensure that all warranties relating to the Assets shall be assignable to Gulf Power without further consents or approvals). Seller shall also provide to Gulf Power all documentation that would be required for making a warranty claim (including purchase receipts, warranty certificates, installation documentation, etc.).

9. Closing Conditions:

The closing of the sale and transfer shall be subject to conditions that are customary for similar transactions and this Appendix I, including receipt of all requisite governmental approvals and, as requested by Gulf Power, approval by regulatory authorities to which Gulf Power is subject, the non-existence of a material adverse effect with respect to the Assets, and the non-existence of adverse changes in law or legal requirements.

10. Costs and Expenses:

Each Party shall be responsible for its own costs and expenses (including legal fees) in connection with the transfer of Assets hereunder.



## APPENDIX J

### DETERMINATION OF SELLER AMOUNT AND BUYER AMOUNT

#### A. Determination of Seller Amount.

Except as set forth in that certain Right of First Refusal Agreement between Gulf Power, Seller, and HelioSage, LLC entered into contemporaneously with this Agreement, the Seller Amount shall be equal to the following amounts for the applicable periods, as set forth in the table below.

Applicable Period	Seller Amount
Effective Date through February 28, 2015.	[REDACTED]
March 1, 2015 until the Day on which Seller commences initial construction activities at the Site.	[REDACTED]
The Day on which Seller commences initial construction activities at the Site until the Day before the Commercial Operation Date.	[REDACTED] adjusted on January 1 of each Calendar Year after the Effective Date by CPI
On and after the Commercial Operation Date	*As determined below.

\* For all periods on and after the Commercial Operation Date, the Seller Amount shall be determined as set forth in the remaining provisions of this Section A.

By the Day that is ten (10) Days prior to the anticipated Commercial Operation Date, Gulf Power shall determine the Seller Amount that applies commencing on the Commercial Operation Date and for the remainder of the Calendar Year in which the Commercial Operation Date occurs. For each Calendar Year thereafter occurring during the Term (or partially occurring during the Term), Gulf Power shall determine the Seller Amount that shall apply for such Calendar Year (or applicable portion thereof). Gulf Power shall make such determinations pursuant to the remaining provisions of this Section A; provided that the failure to determine such amounts by such dates shall not constitute a failure to perform under the Agreement or

relieve Seller from the obligation to provide Performance Security in amounts as required by Article 5 of the Agreement.

On and after the Commercial Operation Date, the Seller Amount for a given Calendar Year (or applicable portion of a given Calendar Year that occurs on and after the Commercial Operation Date or otherwise during the Term) shall be the amount that is equal to the sum of: (i) [REDACTED] adjusted on January 1 of each Calendar Year after the Effective Date by CPI ("Site Remediation Amount"); plus (ii) the greater of: (A) the Minimum Amount for such Calendar Year, as determined in Section C of this Appendix J; or (B) the Adjusted Additional Seller Amount for such Calendar Year, as determined below.

For purposes hereof, the Adjusted Additional Seller Amount for a given Calendar Year (or applicable portion thereof) shall be determined as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

**B. Determination of Buyer Amount.**

The Buyer Amount for a given Calendar Year shall be the amount that is equal to the greater of: (i) the Minimum Amount for such Calendar Year, as determined in Section C of this Appendix J; or (ii) the Adjusted Buyer Amount for such Calendar Year, as determined pursuant this Section B below.

For purposes hereof, the Adjusted Buyer Amount for a given Calendar Year shall be determined as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

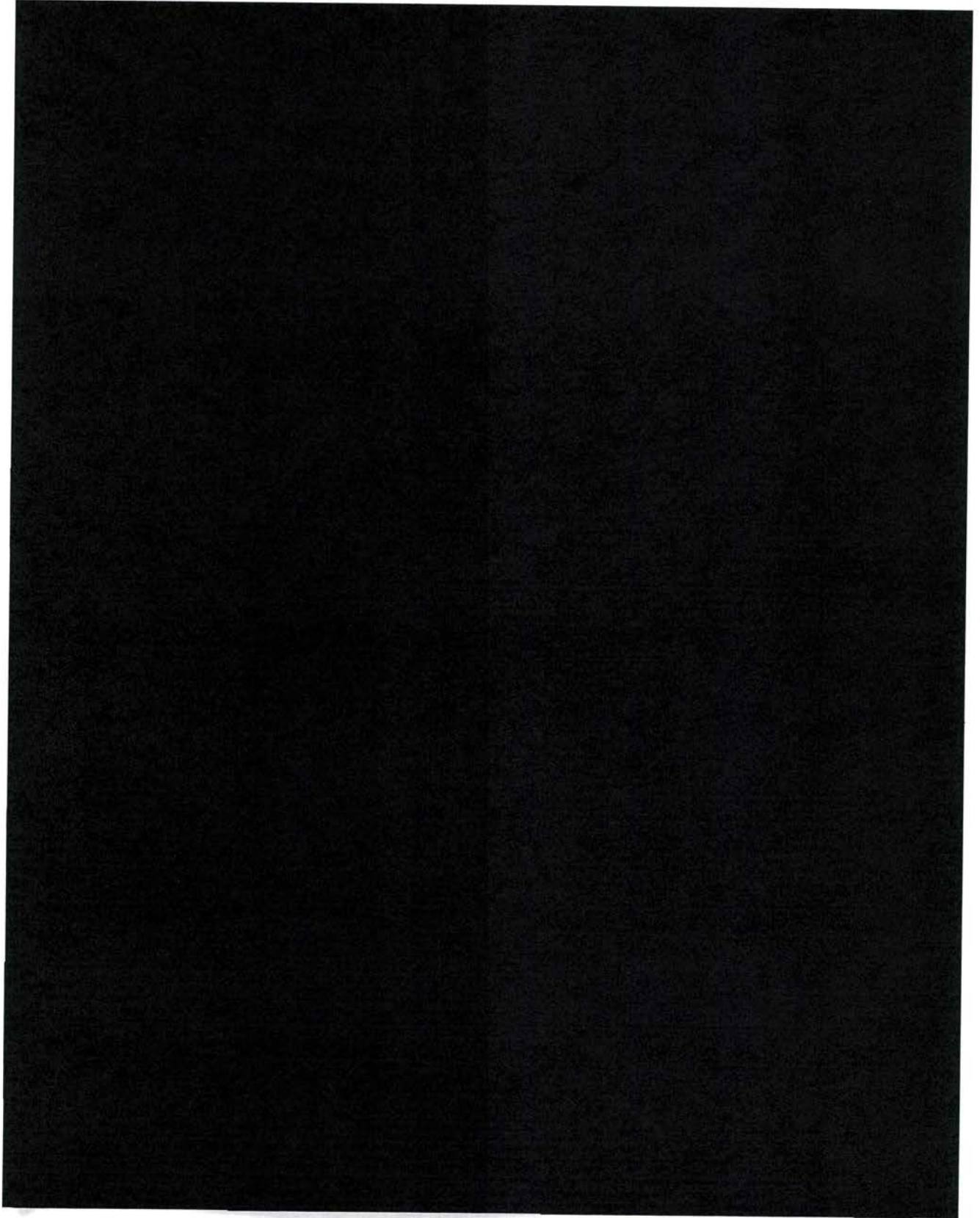
C. Certain Definitions.

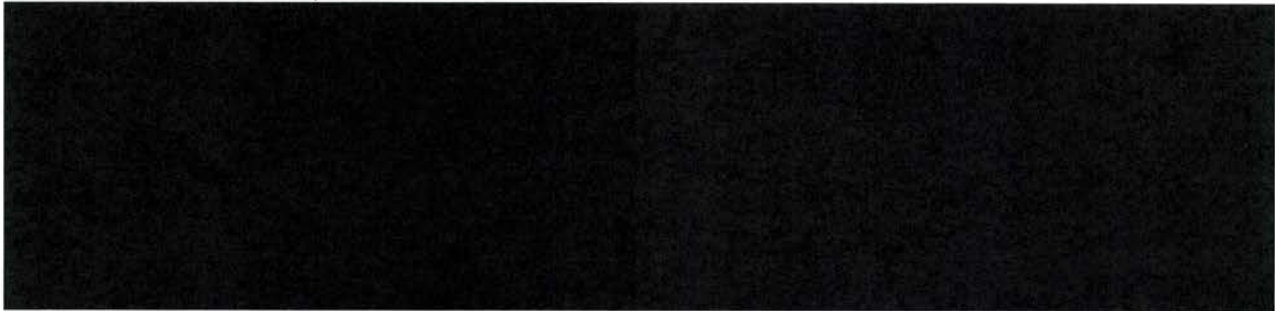
The following terms shall have the respective meanings set forth below for purposes of this Appendix J:

[REDACTED]

[REDACTED]







Calendar Year	Minimum Amount (in \$/kW)
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038 and all applicable subsequent Calendar Years	





[REDACTED]

A. Example Calculations of Seller Amount.

Example calculations of the Seller Amount are set forth in Example J-1, Example J-2, and Example J-3 below. These are only examples of the calculations described in this Appendix J and are not intended to, and shall not, modify any of the terms of this Appendix J or this Agreement. To the extent that there is a conflict between such examples and the other terms of this Appendix J or this Agreement, such other terms of this Appendix J and this Agreement shall govern. Actual amounts of the Seller Amount will vary from those set forth in the examples.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Table J-1\***

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-1 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.



Table J-2\*

Age Group	Male (%)	Female (%)
18-24	~10	~90
25-34	~10	~90
35-44	~10	~90
45-54	~10	~90
55-64	~10	~90
65+	~10	~90

\* If the Parties extend the Term beyond twenty five (25) Annual Periods pursuant to Section 3.1.1 of the Agreement, for the period of the extension, the values set forth in Table J-2 shall be replaced with values that the Parties mutually agree shall apply for the period of the extension.



# **Exhibit D**

## **Right of First Refusal**

**(ROFR)**

## **Agreement**

## **RIGHT OF FIRST REFUSAL AGREEMENT**

This Right of First Refusal Agreement ("Agreement") dated as of November 7, 2014 ("Effective Date"), is entered into by and between GULF POWER COMPANY, a corporation organized and existing under the laws of the state of Florida ("Gulf Power"); and HELIOSAGE, LLC, a Virginia limited liability company ("HelioSage"), and GULF COAST SOLAR CENTER II, LLC, a Florida limited liability company ("Project Company").

### **WITNESSETH:**

WHEREAS, HelioSage, through its wholly owned subsidiary, the Project Company, is planning to develop and own a solar electric generation facility located at Navy Outlying Landing Field (NOLF) Holley in Santa Rosa County, Florida ("Facility");

WHEREAS, pursuant to that certain Energy Purchase Agreement (as may be amended or modified, the "EPA") entered into by Gulf Power and the Project Company contemporaneously with this Agreement on the Effective Date, (i) the Project Company has agreed to sell and deliver, and Gulf Power has agreed to purchase and receive, all electric energy produced by the Facility; and (ii) Project Company has agreed to provide to Gulf Power all Environmental Attributes and Electrical Products associated with said energy;

WHEREAS, in conjunction with Gulf Power entering into the EPA, HelioSage and the Project Company have agreed to grant Gulf Power a right of first refusal ("ROFR") to purchase the Facility and related assets; and

WHEREAS, HelioSage, the Project Company and Gulf Power desire for this Agreement to set forth the terms and conditions of the ROFR and other agreements of such parties related thereto.



NOW, THEREFORE, in consideration of the premises and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound agree as follows:

#### ARTICLE 1: DEFINITIONS

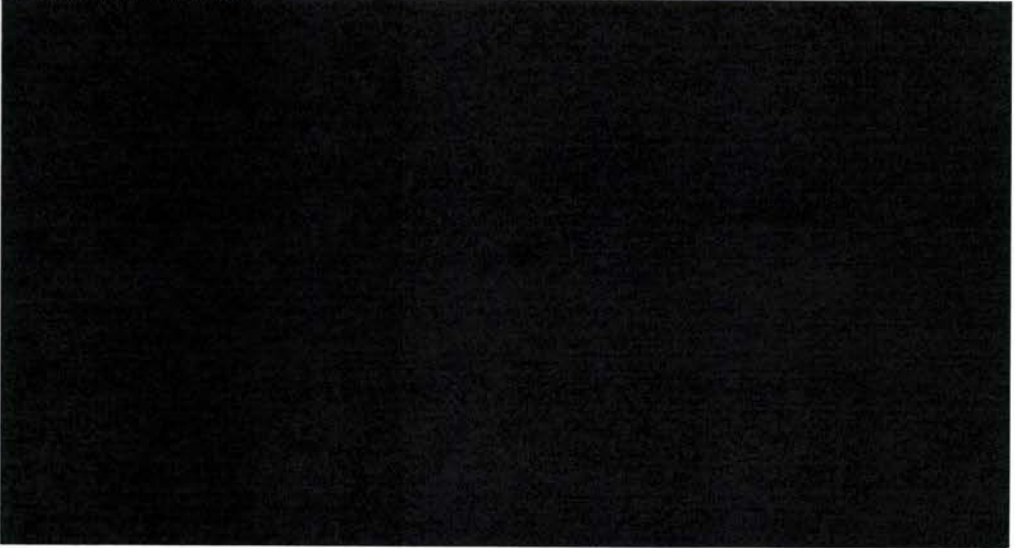
1.1 EPA Definitions. Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement have the meaning set forth in the EPA.

1.2 Other Definitions. In addition to the other defined terms set forth in this Agreement, the following terms have the respective meanings set forth below:

“Facility Assets” means the Facility and all other assets and property (whether real or otherwise) that are necessary or desirable to own, control and operate the Facility, including contracts and permits that are related to the Facility and the ownership and operation thereof (including the EPA).

“Interests” means one hundred percent (100%) of the ownership interests in the Project Company.

“Milestones” means:



[REDACTED]

[REDACTED]

"Transfer" means to, directly or indirectly, transfer, sell, convey, or exchange the Facility Assets or the Interests.

## ARTICLE 2: SOLICITATION OF OFFERS

2.1 Solicitation. After the Effective Date, HelioSage and the Project Company may in their discretion elect to solicit offers from one or more non-Affiliate Persons for the Transfer of all of the Facility Assets and/or the Interests. In the event that HelioSage or the Project Company elects to solicit such offers, then HelioSage and the Project Company shall issue such solicitations no later than [REDACTED] Each of HelioSage and the Project Company covenants and agrees that during the term of this Agreement, any Transfer of the Facility Assets or the Interests (as applicable) to any Person shall be a Transfer of no less than one hundred percent (100%) of the Facility Assets or the Interests.

2.2 Receipt of Offers. If at any time: (i) HelioSage, the Project Company or any of their Affiliates receives, pursuant to solicitations pursuant to Section 2.1 or otherwise, a *bona fide* offer from any non-Affiliate Person for the Transfer of the Facility Assets or the Interests; and (ii) HelioSage, the Project Company or applicable Affiliate intends to accept such *bona fide* offer, HelioSage shall provide to Gulf Power notice stating: (a) the name and address of the proposed transferee ("Proposed Transferee"); (b) a description of the Interests or Facility Assets proposed to be Transferred; (c) a summary of the material terms and conditions of the proposed Transfer (including price), (d) a description of any documents that reflect the terms and conditions of such *bona fide* offer (which documents shall be provided to Gulf Power with such notice); (e) the proposed date of such Transfer; and (f) a representation that the Proposed



Transferee has been informed of the ROFR provided in this Agreement ("Offer Notice"). For purposes hereof, a *bona fide* offer must: (1) be evidenced by a written instrument between HelioSage, the Project Company or the applicable Affiliate and the Proposed Transferee that sets forth the cash consideration payable for such Interests or Facility Assets and the source of financing for such purchase (which written instrument shall be provided to Gulf Power at the time of the Offer Notice); and (2) relate solely to the Interests and the Facility Assets.

2.3 Provision of Information. No later than [REDACTED] prior to the date the Offer Notice is received by Gulf Power under Section 2.2, HelioSage and the Project Company shall provide to Gulf Power all information relating to the Interests and the Facility Assets and access to the Facility Assets as requested by Gulf Power, including all of the information of the type set forth in Section 1 of Appendix I of the EPA and any and all relevant information that HelioSage, the Project Company or their Affiliates may have regarding pricing for the design, engineering, procurement and construction of the Facility. HelioSage and the Project Company shall thereafter continue to make such information and the Facility Assets available to Gulf Power during the term of this Agreement.

2.4 Right of First Refusal. [REDACTED]  
[REDACTED] Gulf Power shall have the right to notify HelioSage and the Project Company that it desires to purchase the Facility Assets [REDACTED]  
[REDACTED]

[REDACTED] If Gulf Power provides such a notice within such time period, then Gulf Power, HelioSage and the Project Company (as applicable) shall use

reasonable efforts to execute and deliver, [REDACTED] after the date the Offer Notice is received by Gulf Power (such [REDACTED] period being referred to as the "ROFR Period"), an agreement whereby Gulf Power would purchase the Facility Assets [REDACTED] (which shall be subject to requisite regulatory approvals and other customary conditions to closing). In the event that Gulf Power does not provide such a notice within such time period, or if such a purchase agreement is not executed and delivered by the end of the ROFR Period despite the reasonable efforts of the parties hereto, then HelioSage and the Project Company shall be free for a period of [REDACTED] after the end of the ROFR Period to consummate the Transfer of the Interests and the Facility Assets to the Proposed Transferee [REDACTED]

In the event that the consummation of such Transfer does not occur within such [REDACTED] period, then neither the Interests nor the Facility Assets shall be Transferred until Gulf Power is provided with a ROFR and other rights pursuant to this Agreement and HelioSage and the Project Company again comply with the requirements hereof.

### SECTION 3: FAIR MARKET VALUE DETERMINATION

#### 3.1 Fair Market Value Determination.

[REDACTED] may retain a third party investment bank to determine the



then fair market value of the Facility Assets ("Fair Market Value"); provided that such third party investment bank shall be reasonably acceptable to Gulf Power and shall have verifiable experience in appraising solar power generation facilities and assets similar to the Facility Assets. HelioSage and the Project Company shall provide to the investment bank all information necessary for such determination of Fair Market Value, and [REDACTED]

[REDACTED] After the Fair Market Value is determined, HelioSage shall provide Gulf Power notice stating: (i) the amount of the Fair Market Value; (ii) a summary of the material terms and conditions on which HelioSage (or the Project Company, as applicable) would be willing to sell the Facility Assets to Gulf Power; and (iii) a description of the Facility Assets to be Transferred to Gulf Power ("FMV Notice").

3.2 Information. No later than [REDACTED] prior to the date the FMV Notice is received by Gulf Power under Section 3.1, HelioSage and the Project Company shall provide to Gulf Power all information relating to the Interests and the Facility Assets and access to the Facility Assets as requested by Gulf Power, including all of the information of the type set forth in Section 1 of Appendix I of the EPA and any and all relevant information that HelioSage, the Project Company or their Affiliates may have regarding pricing for the design, engineering, procurement and construction of the Facility. HelioSage and the Project Company shall thereafter continue to make such information and the Facility Assets available to Gulf Power during the term of this Agreement.

3.3 Right to Purchase. By no later than [REDACTED] after the FMV Notice is received by Gulf Power, Gulf Power shall have the right to provide notice to HelioSage and the Project Company that it desires to purchase the Facility Assets [REDACTED]

[REDACTED] If Gulf Power provides such a

notice within such time period, then Gulf Power, HelioSage and the Project Company (as applicable) shall use reasonable efforts to execute and deliver, [REDACTED]

[REDACTED] an agreement whereby Gulf Power would purchase the Facility Assets [REDACTED]

[REDACTED] (which shall be subject to requisite regulatory approvals and other customary conditions to closing). In the event that Gulf Power does not provide such a notice within such time period, or if such a purchase agreement is not executed and delivered by the end of the FMV Period despite the reasonable efforts of the parties hereto, then HelioSage and the Project Company shall be free for a period of [REDACTED] to consummate the Transfer of the Interests and the Facility Assets to another non-Affiliate Person so long as [REDACTED]

[REDACTED] In the event that the consummation of such Transfer does not occur within such [REDACTED] then neither the Interests nor the Facility Assets shall be Transferred until Gulf Power is provided with a ROFR and other rights pursuant to this Agreement and HelioSage and the Project Company again comply with the requirements hereof.

#### **SECTION 4: TERM**

The term of this Agreement shall be from the Effective Date until the earlier of: (i) the date on which all of the Interests or Facility Assets have been Transferred to a non-Affiliate of HelioSage and after HelioSage and the Project Company have complied with their obligations under this Agreement; or (ii) the date on which Gulf Power provides HelioSage notice that Gulf



Power, in its sole and absolute discretion, no longer requires the ROFR and other rights provided pursuant to this Agreement.

#### SECTION 5: MISCELLANEOUS

5.1 Seller Amount Under EPA. Notwithstanding Appendix J of the EPA, provided that HelioSage and the Project Company have complied with their obligations hereunder, Gulf Power agrees that during the term of this Agreement, the "Seller Amount" for purposes of Appendix J shall be equal to the following amounts for the applicable periods, as set forth in the table below.

Applicable Period	Seller Amount
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

After the expiration of the term of this Agreement, the Seller Amount shall be determined solely pursuant to Appendix J of the EPA; provided that:

- (i) notwithstanding anything to the contrary in the EPA, but subject to subpart (ii) below, the Project Company shall provide Gulf Power with any additional Performance Security required under the EPA (i.e., the amount by which the Performance Security required to be provided under the terms of the EPA exceeds the amount of Performance Security required to be provided by the Project

Company consistent with the determination of Seller Amount pursuant to the table above) ("Required Additional Security") as follows: (a) the Project Company shall provide the [REDACTED] by no later than [REDACTED] after the expiration of the term of this Agreement; and (b) the Project Company shall provide the remainder of the Required Additional Security by no later than [REDACTED] after the expiration of the term of this Agreement; and

- (ii) Notwithstanding subpart (i) above, by no later than the Day on which the Project Company commences initial construction activities at the Site, and thereafter, the Project Company shall provide Gulf Power with, and maintain, the full amount of Performance Security required to be provided under the terms of the EPA, at the times required pursuant to the terms of the EPA and consistent with the determination of Seller Amount solely pursuant to Appendix J of the EPA.

5.2 Ownership Covenants. HelioSage and the Project Company represent, warrant and covenant that during the term of this Agreement, (i) the Project Company shall own all of the Facility Assets; (ii) the only assets owned by the Project Company shall be the Facility Assets; and (iii) the Project Company shall be a wholly owned (direct or indirect) subsidiary of HelioSage.

5.3 Assignment. No party to this Agreement shall assign its rights or obligations under this Agreement to any other Person without the prior written consent of the other parties hereto (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, by notice to HelioSage and the Project Company, Gulf Power shall be entitled to assign its rights and obligations under this Agreement at any time to any partners of Gulf Power or any



Affiliates of Gulf Power without the consent of HelioSage and the Project Company, in which event the applicable assignee shall be substituted for Gulf Power as a party to this Agreement.

5.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing or by electronic mail and shall be deemed to have been given (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid; or (iv) when transmitted to the addressee via electronic mail at the applicable electronic mail address set forth below. Such communications shall be sent to the respective Parties at the following addresses:

If given to Gulf Power:

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0335  
Attention: Renewable Energy Manager  
Electronic Mail Address: smfitzge@southernco.com

With a copy to:

Beggs & Lane  
501 Commendencia Street  
Pensacola, FL 32502  
Attention: Steven Griffin  
Electronic Mail Address: srg@beggslane.com

If given to HelioSage and/or the Project Company:

HelioSage, LLC  
117 4<sup>th</sup> Street, S.E. – Suite B  
Charlottesville, VA 22902  
Attention: Nelson S. Teague, Jr.  
Electronic Mail Address: nteague@heliosage.com

unless HelioSage or Gulf Power shall have designated a different officer or address for itself by notice to the other.

5.5 Headings. The descriptive headings of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

5.6 Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Florida.

5.7 Further Assurances. The parties hereto agree to execute and deliver such other instruments, agreements and other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

5.8 No Waiver. The failure of any party hereto to enforce any provision of this Agreement shall in no way be construed as a waiver of any such provision as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by any party hereto of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

5.9 Amendment. This Agreement may be amended only by a written instrument duly executed by all parties hereto.

5.10 Recording. Upon request by Gulf Power, HelioSage and the Project Company shall promptly execute such documentation and instruments as reasonably requested by Gulf Power that set forth Gulf Power's rights under this Agreement. Gulf Power may publicly record such documentation, instruments and/or this Agreement in order to give public notice of such rights.



5.11 No Other Beneficiaries. Nothing in this Agreement shall be construed to create any duty, obligation or liability of a party hereto to any Person not a party to this Agreement.

5.12 Construction and Interpretation. This Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement. Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

5.13 Counterparts: Facsimile and Electronic Copies. This Agreement may be executed by facsimile or PDF (electronic copy) and in counterparts, all of which for all purposes will be deemed to be an original and all of which, taken together, constitutes one and the same instrument.

[The next page is the signature page.]

IN WITNESS WHEREOF, each party hereto has duly executed this Agreement as of the  
Effective Date.

**HELIOSAGE, LLC**

By: Nelson S. Teague, Jr.  
Name: Nelson S. Teague, Jr.  
Title: Executive Vice President

**GULF POWER COMPANY**

By: Michael L. Burroughs  
Name: MICHAEL L. BURROUGHS  
Title: VICE-PRESIDENT

**GULF COAST SOLAR CENTER II, LLC**

By: Nelson S. Teague, Jr.  
Name: Nelson S. Teague, Jr.  
Title: Manager

ATTEST:

Susan D. Ritenour  
Susan D. Ritenour  
Corporate Secretary



## SCHEDULE "C"

### **Justification:**

**The following table is applicable to Exhibits "A," "B," and "C" to Gulf's Petition.**

<b><u>Line(s)/Field(s)</u></b>	<b><u>Justification</u></b>
Pages 6-7; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Pages 14-19; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Pages 27-28; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Page 55; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Appendix A, pages 2-6; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.

Appendix E, page 1; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Appendix F, pages 1-5; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Appendix H, pages 1-4; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Appendix I, pages 1-3; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
Appendix J, pages 1-9; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.



**The following table is applicable to Exhibit "D" to Gulf's Petition.**

Pages 2-9; all highlighted information	This information is entitled to confidential classification pursuant to §366.093(3)(d)-(e), Florida Statutes. The basis for this information being designated as confidential is more fully set forth in paragraph 3.
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