

**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT**

**PURCHASE AND SALE AGREEMENT**

**for**

**Metropolitan Edison Company,**

**Pennsylvania Electric Company,**

**and**

**Pennsylvania Power Company**

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**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

**THIS SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT PURCHASE AND SALE AGREEMENT** (“Agreement”), made and entered into as of the Effective Date, by and between the (“Company”), a Pennsylvania public utility company organized and existing under the laws of the Commonwealth of Pennsylvania, and SPAEC Supplier (the “SPAEC Supplier”). The Company and the SPAEC Supplier hereinafter are also sometimes referred to collectively as the “Parties”, or individually as a “Party”, and are further identified pursuant to Appendix C of this Agreement.

**WITNESSETH:**

**WHEREAS**, under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §2801 et seq., and under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1 et seq. (the “AEPS Act” or the “Act” as amended from time to time), the Company is an electric distribution company engaged, *inter alia*, in providing retail electric service within its service territory located within the Commonwealth of Pennsylvania; and

**WHEREAS**, the Company has conducted and completed a successful competitive bidding process for the procurement of Solar Photovoltaic Alternative Energy Credits (“SPAECs”) in which SPAEC Supplier was a successful bidder; and

**WHEREAS**, SPAEC Supplier owns, or otherwise has the right to sell, the rights to SPAECs from certain Solar Photovoltaic Alternative Energy Sources (the “Projects”) associated with the electricity generated by such Projects; and

**WHEREAS**, SPAEC Supplier desires to sell SPAECs from the Projects to the Company, and the Company desires to purchase such SPAECs from SPAEC Supplier in order to satisfy the Company’s obligations under the Act, subject to the terms and conditions set forth herein;

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

## **ARTICLE 1 DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms have the respective meanings set forth below. Other capitalized terms not set forth in this section are defined elsewhere in this Agreement or have the meaning ascribed to them by the Act.

**Act or Alternative Energy Portfolio Standards Act** has the meaning set forth in the Recitals, and, among other things, requires the Company to obtain alternative energy credits corresponding to electricity generated from Solar Photovoltaic Alternative Energy Sources equal to a stipulated percentage of the total electric energy sold by the Company in each Reporting Year, as measured by Alternative Energy Credits.

**Affiliate SPAEC Agreement** means an agreement substantially in the form of this Agreement between SPAEC Supplier and any affiliate of the Company for the purchase and sale of SPAECs.

**Agreement** means all of the provisions, the exhibits incorporated as part of this Agreement, and any other documents incorporated by reference.

**Alternative Energy Credit** has the meaning ascribed to such term in the Act.

**Alternative Energy Portfolio Standards** or “**AEPS**” means those standards established by the Act requiring that a certain amount of electric energy sold from alternative energy sources is to be included as part of the sources of electric generation by electric utilities within the Commonwealth of Pennsylvania in accordance with the Act as it may be amended from time to time.

**Alternative Energy Source** has the meaning ascribed to such term in the Act, and includes sources for the production of solar photovoltaic or other solar electric energy.

**Bankruptcy Code** means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 1101 et seq.

**Business Day** means a day on which Federal Reserve member banks in New York City are open for business. For purposes of this Agreement, a Business Day shall open or begin at 8:00 a.m. and shall close or end at 5:00 p.m. Eastern Prevailing Time (“EPT”).

**Confidential Information** means all oral and written information exchanged between the Parties which is not otherwise available to the public with respect to the subject matter of this Agreement except (a) information that is or becomes available to the public other than as a result of a disclosure by either Party on a non-confidential basis prior to this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

**Commission** means the Pennsylvania Public Utility Commission.

**Commodities Exchange Act** means the Commodities Exchange Act as amended and codified at 7 U.S.C. § 1 et seq.

**Company** - Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company or West Penn Power Company as designated in Appendix C.

**Credit Exposure Amount** has the meaning set forth in Section 5.2 hereof.

**Delivery Date** means the date on which PJM GATS issues a written, facsimile or electronic confirmation to Company and SPAEC Supplier of the SPAEC Supplier's transfer order instructing PJM GATS to transfer Product to Company's PJM GATS account.

**Delivery Period** – the delivery period specified in Appendix C.

**Effective Date** means the date set forth in Appendix C as the effective date.

**Event of Default** has the meaning set forth in Section 10.1 hereof.

**Force Majeure** means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party's fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes, but is not limited to: acts of God, civil disturbance, sabotage, action or restraint by court order or public or government authority, so long as the affected Party has not applied for, or assisted in, the application for, and has opposed, where and to the extent reasonable, such government action. Force Majeure shall not include a) the SPAEC Supplier's ability to sell SPAECs to a market at a more advantageous price, b) performance failure on the part of one or more Projects, which may be relied upon by the SPAEC Supplier in order to generate SPAECs for sale and delivery hereunder or otherwise, c) increased cost of performance by SPAEC Supplier (including the reduction or elimination of Project Benefits associated with the production of SPAECs by any Project), d) changes in the requirements of any Governmental Authority, including registration requirements for SPAECs; or e) other occurrences to the degree not also constituting a *force majeure* under the Act; *provided, however, that*, a determination of *force majeure* under the Act shall not, in and of itself, alone, constitute an event of Force Majeure under this Agreement.

**Forward Contract** has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

**Forward Contract Merchant** has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

**Governmental Authority** means the federal government, any state or local government or other political subdivision thereof (whether federal, state or local), any court and any administrative agency or other regulatory body, instrumentality, authority or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**Interest Rate** means a per annum rate of interest equal to two (2%) percent over the prime lending rate as published from time to time in the Wall Street Journal under "Money Rates" on the date on which any payment or delivery obligation is due (or if not published on such day on the most recent preceding day on which it is published), but in no event to exceed the maximum lawful rate.

**Interest Index** means the average Federal Funds Effective Rate for the period of time that funds are held on deposit by Company under Section 5.2.4 hereof. The Federal Funds Effective Rate is published daily on the Federal Reserve website [www.federalreserve.gov/releases/h15/update/](http://www.federalreserve.gov/releases/h15/update/).

**Liens** means any encumbrance of any nature, including but not limited to, any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right-of-way, restriction, equity interest, and conditional sales agreement.

**Market Price** means the market price determined based on the average of prices quoted by three (3) reputable, independent third party leading market dealers, which are regularly engaged in the buying and selling of AECs and SPAECs.

**PJM** means the PJM Interconnection, a regional transmission organization that coordinates and directs the operation and ensures reliability of the high-voltage electric power system service all or parts of the territory consisting of the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

**PJM GATS** means the environmental registry and information system administered by PJM Environmental Information Services, Inc. or any successor AEPS Alternative Energy Credit registry designated by the Commission.

**Product** means an SPAEC corresponding to the production of solar photovoltaic electricity as set forth in the AEPS Act; provided, however that the Product does not include: Project Benefits or any item that would otherwise be an environmental benefit or attribute under this definition that is not required for use of the SPAEC for compliance with the Act. The Product is as further defined in Appendix C regarding the SPAEC classification, the SPAEC Quantity and the applicable delivery period.

**Project** has the meaning set forth in the Recitals hereof.

**Project Benefits** means production tax credits, investment tax credits, or other direct, third-party federal, state or local subsidies, incentives, grants, credits, rebates or funding for the purchase, ownership, construction or operation of a Project, or the generation of electricity or production of Alternative Energy Credits by a Project.

**Quarter** means the three month calendar period commencing each June, September, December and March of the Reporting Period during the Term (or any partial three month calendar period in the event the Term commences during such period).

**Replacement Price** means the lesser of (i) the price at which Company purchases substitute Product to make up for any deficiency in the amount of Product delivered by SPAEC Supplier, or, (ii) the Market Price for such quantity of Product as SPAEC Supplier fails to deliver.

**Reporting Period** means the twelve month period beginning June 1 through May 31 of the applicable Reporting Year in which such period occurs.

**Reporting Year** means the year in which May 31 of the twelve month period beginning June 1 and ending May 31 occurs (*e.g.*, the Reporting Period 2020 means June 1, 2019 through May 31, 2020).

**Sales Price** means the lesser of (i) the price at which SPAEC Supplier resells the Product, which Company has failed to accept or, (ii) the Market Price for such quantity of Product that Company fails to accept.

**SPAEC Price** means the price in dollars per MWh, set forth in Appendix C hereto, which was bid by the SPAEC Supplier as the delivered price for each SPAEC delivered.

**SPAEC Quantity** means the quantity of SPAECs purchased by Company under this Agreement, as set forth in Appendix C.

**SPAEC Quantity per Quarter** means with respect to a Reporting Year one Quarter (1/4) of the SPAEC Quantity.

**SPAEC Supplier** means the party so identified on Appendix C.

**SPAEC Supplier's Account** means the SPAEC Supplier financial institution account specified in Appendix C.

**Solar Photovoltaic Alternative Energy Credit** or "SPAEC" means an Alternative Energy Credit corresponding to the production of solar photovoltaic electricity as set forth in the AEPS Act.

**Solar Photovoltaic Alternative Energy Source** means a source for the production of solar photovoltaic electricity as set forth in the AEPS Act.

**Tangible Net Worth** or "TNW" means total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

**Taxes** means but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth. A tax is not a penalty or a fine.

**Term** has the meaning set forth in Section 2.1 hereof.

**Unsecured Credit Limit** or "UCL" has the meaning set forth in Section 5.1.2 hereof.

**1.2 Construction.** Unless otherwise indicated (a) defined terms include the plural as well as the singular; (b) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all appendices, exhibits, schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (c) any term defined by reference to any instrument, agreement or other document has such meaning set forth in such document as of the date hereof and such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (d) a reference to any law or regulations includes any amendment, modification or successor thereto; (e) a reference to any Person includes its permitted successors and assigns; (f) all references to appendices, sections, schedules and exhibits shall mean and refer to the respective appendices, sections, schedules and exhibits in or attached to the agreement or document in which such reference appears; (g) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; (h) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular article, Section or subdivision hereof; and (i) references to “termination of this Agreement,” “this Agreement is terminated,” “this Agreement may be terminated” and similar expressions used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions, which by their nature, or as provided elsewhere in this Agreement, survive termination.

## **ARTICLE 2 TERM OF AGREEMENT**

**2.1 Term.** The term of this Agreement shall be for the Delivery Period specified in Appendix C and shall, unless earlier terminated, remain in effect through the end date (the “Termination Date”).

**2.2 Early Termination.** This Agreement may be terminated prior to the Termination Date as follows:

2.2.1 At any time by the mutual consent of the Parties;

2.2.2 As provided in, and with such notice as required by, Article 11, by the Non-Defaulting Party if an Event of Default occurs;

2.2.3 By either Party in the case of a prolonged Force Majeure event where the Party claiming Force Majeure fails to perform its obligations under this Agreement on account of such Force Majeure event for a period exceeding 180 days after the occurrence of such Force Majeure event, and upon 30 days written notice from the non-claiming Party, unless extended by mutual agreement of the Parties in writing for not more than another 180 days and provided that the claiming party has been and continues to exercise due diligence to remedy the Force Majeure event prior to and after such extension, if any.



**2.3 Impact of Termination on Accrued Obligations.** Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

### **ARTICLE 3 DELIVERY, BILLING AND PAYMENT**

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during each Reporting Year during the Term, SPAEC Supplier shall sell, and Company shall purchase, all rights, title and interest in the Product up to the SPAEC Quantity specified in Appendix C. Unless otherwise agreed by the Parties, Company shall not be obligated to purchase, or to accept delivery, of any Product in excess of either the SPAEC Quantity per Reporting Year or the SPAEC Quantity per Quarter for any Quarter.

**3.2 Delivery of Product by SPAEC Supplier.** During the Term of this Agreement, SPAEC Supplier shall deliver Product to Company as follows:

3.2.1 For each Quarter during the Term, not later than 45 calendar days following the close of each such Quarter, SPAEC Supplier shall issue a transfer order to PJM for the transfer of Product to the Company's PJM GATS account in an amount equal to the SPAEC Quantity per Quarter. The SPAECS must be generated during the associated Reporting Year for each delivery. The date of the issuance of the transfer order by SPAEC Supplier shall be the "Delivery Date."

3.2.2 Within 5 Business Days following the Delivery Date, Company shall confirm the transfer order in PJM GATS.

3.2.3 Within thirty (30) days of the Delivery Date, SPAEC Supplier shall issue an invoice to Company for the amount of Product delivered during the preceding Quarter. Such invoice shall state the quantity of Product delivered to Company during the preceding Quarter and the amount owed by Company as calculated using the SPAEC Price. Such invoice shall also reflect any interest owed by Company to SPAEC Supplier, if any, as well as any credits owing for any reason from SPAEC Supplier to Company, if any. In the event SPAEC Supplier is a party to any Affiliate SPAEC Agreement, SPAEC Supplier shall issue a single invoice to Company and each applicable Affiliate of Company with the quantity delivered and amounts due under this Agreement and each Affiliate SPAEC Agreement.

3.2.4 Within thirty (30) days of the Company's receipt of the SPAEC Supplier's invoice, Company shall, unless disputed, pay the amount set forth in SPAEC Supplier's invoice for the delivered Product under this Agreement owed by Company for such Quarter by wire transfer of immediately available United States dollars to SPAEC Supplier's Account:

3.2.5 Amounts not paid when due shall accrue Interest from the due date to the date of payment at the Interest Rate.

3.2.6 In the event of a dispute regarding the amount to be paid, Company shall pay the undisputed portion of the SPAEC Supplier's invoice, and, with respect to the disputed portion, shall inform SPAEC Supplier at the time of such payment of the reasons for

withholding the disputed amount. Interest, at the Interest Rate shall be paid on disputed amounts ultimately determined to be owed (whether from Company to SPAEC Supplier or SPAEC Supplier to Company) calculated from the due date to the date of payment or from the date of payment to the date of refund, as the case may be.

### **3.3 Annual SPAEC Quantity.**

3.3.1 To the extent that in any Reporting Year during the Term, SPAEC Supplier fails to deliver Product up to the SPAEC Quantity specified in Appendix C, within 45 calendar days following the end of the Reporting Period for any Reporting Year during the Term, SPAEC Supplier shall provide Product sufficient to cure the deficiency for such Reporting Year; provided, however, that if SPAEC Supplier does not so provide, Company, at its option, may (i) obtain substitute Product at the Replacement Price and shall invoice SPAEC Supplier for the positive difference, if any, between the SPAEC Price and the Replacement Price, or (ii) invoice SPAEC Supplier for an amount equal to the alternative compliance payment for each SPAEC that SPAEC Supplier fails to deliver to Company during the Reporting Period for the applicable Reporting Year, which SPAEC Supplier shall pay within 30 calendar days of the date of such invoice; provided further, that if the Commission determines that the alternative compliance payment for such Reporting Year is more or less than the amount invoiced by Company, SPAEC Supplier shall pay Company any deficiency, and Company shall reimburse SPAEC Supplier any overpayment, as the case may be, within 30 calendar days of the Commission's determination.

3.3.2 To the extent that in any Quarter of any Reporting Year during the Term, Company fails, without reasonable cause hereunder, to accept delivery of Product up to the SPAEC Quantity per Quarter, and has not cured such failure within 10 Business Days after the Delivery Date, upon 3 calendar days written notice following such failure to cure, SPAEC Supplier shall have the right to sell the unaccepted Product and to invoice Company for the positive difference between the SPAEC Price and the Sales Price, which Company shall pay within 30 calendar days of the date of such invoice.

**3.4 PJM GATS Responsibilities.** SPAEC Supplier and Company are each responsible for their own costs associated with establishing and administering any accounts with PJM GATS sufficient to accomplish the delivery of the Product hereunder during the Term.

### **3.5 Risk of Loss, Title and Ownership.**

3.5.1 Subject to Section 3.6 below, (a) prior to, and through the Delivery Date, SPAEC Supplier shall bear any and all risk of loss with respect to the Product, and (b) after the Delivery Date, Company shall assume and bear any and all risk of loss with respect to the Product.

3.5.2 Title to the Product shall transfer from SPAEC Supplier to Company as of the Delivery Date for each Quarter, and all SPAECs transferred to Company by SPAEC Supplier on the Delivery Date shall be:

(a) free and clear of all Liens and Company shall have sole, exclusive and perpetual ownership of all SPAECs delivered to Company by SPAEC Supplier under this

Agreement, including all rights to sell, assign, transfer, apply or retire any SPAEC transferred to Company by SPAEC Supplier;

(b) only valid SPAECs, which have not been previously retired, claimed or used to satisfy any renewable energy requirements, obligations or voluntary undertaking by any entity in any jurisdiction.

3.5.3 After the Delivery Date, Company shall be solely entitled to any benefits that may thereafter arise from the SPAECs.

3.5.4 SPAEC Supplier agrees to execute all other documents or instruments, at its expense, necessary to effectuate the delivery of the Product to Company or as may be reasonably requested by Company.

**3.6 SPAEC Compliance Status.** Each SPAEC delivered by SPAEC Supplier hereunder shall be capable as of the Delivery Date to be used by the Company for purposes of compliance with the Act. The Company will make a determination within 30 days of delivery of each SPAEC if, as of the Delivery Date, the SPAEC is unable to be used by the Company for compliance with the Act because of a SPAEC Supplier's failure, whether by act or omission to act, under, or with respect to, this Agreement. Any SPAEC the Company determines it is unable to use shall be immediately returned to the SPAEC Supplier, and the SPAEC Supplier shall deliver to the Company an equivalent SPAEC (of the same vintage as would have been the case for the non-compliant SPAEC), which is capable to be used by the Company for purposes of compliance with the Act. SPAEC Supplier shall be responsible to reimburse the Company for any costs or penalties incurred by the Company with respect to any SPAEC delivered hereunder, which the Company is unable to use for compliance with the Act as of the Delivery Date.

**3.7 Energy and Capacity Not Included.** This Agreement does not include the purchase of, and Company shall not purchase, or have any responsibility for the costs of, any energy or capacity from SPAEC Supplier whatsoever, including any energy or capacity from any Project from which SPAEC Supplier obtains any SPAEC for delivery to Company hereunder. Company shall not be responsible for any costs, including construction, financing, operating or maintenance costs associated with the Projects or with SPAEC Supplier's procurement of SPAECs.

## **ARTICLE 4 TAXES AND FEES**

### **4.1 Taxes, Fees and Expenses.**

4.1.1 SPAEC Supplier shall pay any and all Taxes, costs, fees, and expenses, including any and all Taxes and transaction costs, fees and expenses attributable to or arising from the sale of the Product under this Agreement and in order to (a) obtain certification or verification of the Product, including any inspections of any Project in connection therewith, and (b) provide for the filing and recording of any instrument delivered by SPAEC Supplier to convey the Product to Company.

4.1.2 Company shall pay any and all Taxes, costs, fees and expenses incurred in connection with the transfers of Product after the Delivery Date, including with respect to any subsequent sale of the SPAECs acquired from SPAEC Supplier hereunder.

4.1.3 If Company is required by law or regulation to remit or pay Taxes, which are SPAEC Supplier's responsibility hereunder, Company may deduct the amount of any such Taxes from the sums due to SPAEC Supplier under this Agreement.

4.1.4 Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law and for which it timely asserts and diligently pursues such exemption, until final determination thereof.

## **ARTICLE 5 CREDIT AND SECURITY**

**5.1 Creditworthiness Determination.** The Company will determine whether the SPAEC Supplier is creditworthy, or whether the SPAEC Supplier must post security, throughout the Term of this Agreement as follows:

5.1.1 The SPAEC Supplier or its Guarantor will be deemed creditworthy upon meeting the following requirements:

(a) the SPAEC Supplier is rated by at least two of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch"), and

(b) the SPAEC Supplier has a minimum senior unsecured debt rating (or, if unavailable, corporate issuer debt rating discounted one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, or "BBB-" from Fitch (a "Minimum Rating").

(i) In case of split ratings, the lowest rating will be used.

(ii) In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer debt rating discounted one notch) will be used.

5.1.2 For so long as the SPAEC Supplier or its Guarantor satisfies the aforementioned criteria during the Term and subject to Section 5.2 below, the SPAEC Supplier will be granted an Unsecured Credit Limit ("UCL").

Credit Rating of the SPAEC Supplier			Max. Unsecured Credit Limit
S&P	Moody's	Fitch	

A- and above	A3 and above	A- and above	16% of Tangible Net Worth (“TNW”)
BBB+	Baa1	BBB+	10% of TNW
BBB	Baa2	BBB	8% of TNW
BBB-	Baa3	BBB-	6% of TNW
Below BBB-	Below Baa3	Below BBB-	0% of TNW

(a) The UCL sets the SPAEC Supplier’s, or its Guarantor’s, maximum level of credit exposure up to, but not in excess of, the Credit Exposure Amount as defined in Section 5.2 below (and above which security shall be required), for purposes of the delivery of Product hereunder. The maximum level of the UCL will be determined based on the above table.

(b) The SPAEC Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The SPAEC Supplier shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

5.1.3 The Company may make alternative credit arrangements with the SPAEC Supplier if the SPAEC Supplier is unable to demonstrate creditworthiness under the criteria set forth in Section 5.1.1 above. Alternative credit arrangements may include any of the following:

(a) The SPAEC Supplier may submit three years of audited, balance sheet, income, and cash flow statements and associated financial notes to the Company for review.

(i) If after the Effective Date, upon SPAEC Supplier’s submission of such information and during the time of the Company’s review, the SPAEC Supplier shall also post cash or a letter of credit (as set forth in subsections (c) and (d) below) to secure the SPAEC Suppliers Credit Exposure Amount as defined in 5.2 below.

(ii) Within 14 Business Days of receiving the Supplier’s financial statements, the Company will perform a credit worthiness assessment based upon minimum credit rating investment grade industry standards and matrices.

(iii) If the SPAEC Supplier is determined to be creditworthy, it will be granted a UCL of 6% of TNW, and the SPAEC Supplier’s cash security or letter of credit will be returned or cancelled.

(iv) If the SPAEC Supplier is not determined to be creditworthy, then it shall not be granted a UCL, and the SPAEC Supplier’s cash or letter of credit will remain in place during the Term or until a subsequent determination of creditworthiness is made by the Company.

(v) In order to maintain the UCL, the SPAEC Supplier is required to provide to the Company within 30 Business Days after each quarterly financial

reporting period, the balance sheet, income, and cash flow statements and any associated financial notes with a signed attestation of the Chief Financial Officer that the financial statements are true and accurate as of the date thereof. If, during the Term of this Agreement, the SPAEC Supplier does not provide the required financial statements, the SPAEC Supplier will be immediately required to post cash or letter of credit in the amount necessary to cover its Credit Exposure Amount as defined in 5.2 below.

(b) The SPAEC Supplier may provide a guarantee of payment in an amount equal to Credit Exposure Amount as defined in Section 5.2 below, from a parent Guarantor deemed by the Company to be creditworthy, using the aforementioned criteria in Section 5.1.1 and Section 5.1.2 above, such guarantee to be substantially similar to the form set forth in Appendix A to this Agreement. The SPAEC Supplier shall promptly notify the Company of any change in its Guarantor credit rating or financial condition. The SPAEC Supplier shall also furnish evidence of its Guarantor's acceptable credit rating or financial condition upon the request of the Company.

(c) The SPAEC Supplier may provide an irrevocable Letter of Credit, in an amount equal to Credit Exposure Amount as defined in Section 5.2 below, issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P or "A2" from Moody's satisfactory and acceptable in form and substance to the Company, which form is substantially similar to the form set forth in Appendix B to this Agreement.

(d) The SPAEC Supplier may provide a cash deposit in an amount equal to Credit Exposure as defined in Section 5.2 below.

## **5.2 Credit Exposure Amount, Total Exposure Amount and Security Calculation.**

5.2.1 The Company shall calculate the maximum credit limit (the "Credit Exposure Amount") for the SPAEC Supplier in connection with the delivery of Product under this Agreement by multiplying the product of 200% of the SPAEC Price by the SPAEC Quantity per Reporting Year (as set forth in Appendix C).

5.2.2 If the SPAEC Supplier or its Guarantor meets the Minimum Rating no security will be required so long as the Credit Exposure Amount does not exceed the SPAEC Supplier's or its Guarantor's UCL Amount.

5.2.3 In the event that the SPAEC Supplier's or its Guarantor's Credit Exposure Amount exceeds its UCL Amount, the SPAEC Supplier or its Guarantor, shall be required to post security in the form of cash or letter of credit as set forth in Section 5.1 above, in an amount equal to the positive difference between the Credit Exposure Amount and the UCL Amount.

5.2.4 The Company shall pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Quarter, the Company shall prepare a statement of interest amounts due to the SPAEC Supplier. The statement shall be sent to the SPAEC Supplier within three (3) Business Days after the end of the Quarter via overnight mail or other expeditious means in order for the SPAEC Supplier to include such amount in its invoice in accordance with Section 3.2.3 hereof.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES**

**6.1 Representations and Warranties of Both Parties.** As of the Effective Date, each Party hereby represents and warrants to the other Party that:

6.1.1 It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

6.1.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or provisions of law applicable to it;

6.1.3 Except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;

6.1.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

6.1.5 No Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;

6.1.6 To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any Governmental Authority, that would materially adversely affect its ability to perform its obligations under this Agreement;

6.1.7 It is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the Product delivered and purchased under this Agreement;

6.1.8 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

**6.2 Forward Contract.** The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of the Product pursuant to this Agreement, that each party is an "eligible contract

participant” as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the provisions of the Bankruptcy Code with respect to the rights or remedies afforded to non-bankrupt Forward Contract Merchants under Forward Contracts with bankrupt counter-parties. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 11 hereof upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

**6.3 Representations and Warranties of SPAEC Supplier.** On the Effective Date and as of each Delivery Date, SPAEC Supplier hereby represents and warrants to Company that:

6.3.1 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Agreement to which it is a Party, and it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Agreement for purposes related to its business as such;

6.3.2 the Product sold hereunder meets the definition of an Alternative Energy Credit corresponding to the production of solar photovoltaic electricity as set forth in the AEPS Act;

6.3.3 it has the right and/or title to sell the Product, which has never been sold, retired, claimed for any other purpose or use, including as part of satisfying compliance with the Alternative Energy Portfolio Standards by any person or entity under the Act or in other states, and such transfer and sale to the Company is not in violation of any applicable law at the time of such transfer and sale, and the Product is free and clear of all Liens or other encumbrances; and, with respect to each Reporting Period, the Product was generated during the eligible Reporting Year.

## **ARTICLE 7 ASSIGNMENT**

**7.1 Assignment/Delegation.** Neither Company nor SPAEC Supplier shall assign this Agreement nor delegate any of its duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; otherwise any such assignment or delegation shall be voidable at the option of the other Party. Notwithstanding the foregoing, either Party may, without the prior consent of the other Party, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (and without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, including the requirements for creditworthiness and security under Article 5 hereof, and that the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.



**7.2 Financing Cooperation.** Company agrees, at SPAEC Supplier's sole cost and expense, to (i) cooperate with SPAEC Supplier in responding to or complying with the reasonable requirements or reasonable requests of any Financing Party with respect to information regarding the obligations of Company hereunder; (ii) provide reasonable assistance to SPAEC Supplier in complying with the reporting requirements set forth in any financing agreements of a Financing Party; and (iii) at any time, and from time to time, during the Term, after receipt of a written request by SPAEC Supplier, execute and deliver to SPAEC Supplier and/or any Financing Party, such estoppel statements (certifying, to the extent true and correct, among other things that (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would, with the giving of notice or the passage of time, constitute a default under this Agreement, and (5) all amounts then due and owing have been paid) or consents to assignments of this Agreement by SPAEC Supplier as collateral security as may reasonably be required. "Financing Party" means any lenders or other third parties providing construction financing, long-term financing or other credit support in connection with this Agreement.

## **ARTICLE 8 FORCE MAJEURE**

**8.1 Force Majeure.** If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall, subject to Section 2.2.3 hereof, be suspended to the extent required.

8.1.1 The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three (3) Business Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (ii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch.

8.1.2 Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that, subject to Section 2.2.3 hereof, in no event will any Force Majeure event extend this Agreement beyond its Term.

## **ARTICLE 9 CHANGE IN LAW**

**9.1 Change in Law.** If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise revokes or eliminates the Alternative Energy Portfolio Standards, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement. In the event of federal legislation creating a federal renewable energy credit, Company shall have own and have all rights to any federal renewable energy credit derived from the energy associated with each SPAEC transferred to Company under this Agreement.

**9.2 Recovery of SPAEC Costs.** The Company's obligations under this Agreement are contingent on, and limited by, the Company's ability to recover all costs incurred by it under this Agreement from its retail customers in full and on a current basis. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the recovery of costs, the Company may terminate this Agreement upon 45 days written notice. Prior to the effectiveness of such termination, the Parties to this Agreement shall use good faith and reasonable commercial efforts as promptly as practicable to consider an alternative to termination that would provide for full and current cost recovery by the Company.

## **ARTICLE 10 EVENTS OF DEFAULT**

**10.1 Events of Default.** An "Event of Default" by a Party (the "Defaulting Party") shall mean:

10.1.1 Unless otherwise excused or permitted under the terms of this Agreement, a Party's failure to make, when due, any payment required pursuant to this Agreement, regardless of whether a payment or portion thereof may be subject to a billing dispute, shall constitute an Event of Default unless a Party shall have cured the same within three (3) Business Days after receipt of written notice of such payment failure from the other Party; provided, however, that in the event of a billing dispute, the failure to pay the disputed portion of such payment when due shall not constitute an Event of Default so long as the Parties are engaged in good faith efforts to resolve such dispute under Section 3.2.6 hereunder.

10.1.2 SPAEC Supplier's failure to meet the Minimum Rating or to comply with the security requirements set forth in Article 5 within the time frames set forth in this Agreement;

10.1.3 Unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default unless a Party shall have cured the same within thirty (30) days after receipt of written notice of the occurrence of such event from the other Party:

(a) Any representation, warranty or covenant made by such Party herein is proven to be false or misleading in any material respect at the time it was made;

(b) A Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party's prior written consent, to the extent such consent is required under this Agreement, or if at the time of such transfer, assignment or conveyance, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(c) A Party's unexcused failure to perform any other material covenant or obligation set forth in this Agreement that is not enumerated in this Section 10.1.3; or

(d) A Party is the subject of a voluntary bankruptcy, insolvency or similar proceeding;

(e) A Party applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

(f) A Party is the subject of an involuntary bankruptcy or similar proceeding, and fails to have such proceeding dismissed within 60 days; or

(g) A Party commits an act or makes an omission that constitutes an "Event of Default" under any other agreement(s) between Company and the SPAEC Supplier for the provision of AECs or SPAECs.

10.1.4 With respect to SPAEC Supplier, unless otherwise excused or permitted under the terms of this Agreement, the following events, without notice or the opportunity to cure, if the SPAEC Supplier:

(a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) makes an assignment for the benefit of its creditors;

(c) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; or

(d) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

**10.2 Integrated Transaction.** To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

## **ARTICLE 11 REMEDIES UPON DEFAULT**

**11.1 Remedies For Default.** Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

11.1.1 terminate the Agreement by providing written notice to the Defaulting Party of an Early Termination, as provided in Section 2.2 hereof;

11.1.2 accelerate all amounts then owing by the Defaulting Party to the Non-Defaulting Party;

11.1.3 withhold any payments due to the Defaulting Party under this Agreement;

11.1.4 suspend its performance under this Agreement; and

11.1.5 pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

**11.2 Calculation of Damages.** Notwithstanding the foregoing,

(a) in the event of termination by SPAEC Supplier for Company's default, in addition to amounts owed for Product delivered prior to such termination, SPAEC Supplier shall be entitled, as liquidated damages (and not as a penalty), and, provided that such amount is paid by Company within 30 calendar days of SPAEC Supplier's notice of such termination, as its exclusive remedy for Company's default hereunder, to receive cover from Company equal to (i) the positive difference, if any, in price (i.e., SPAEC Price less Sales Price) multiplied by the quantity of Product not delivered due to the termination of the Agreement for the remaining Term of this Agreement, and (ii) actual, reasonable and verifiable third party fees, including broker fees and legal fees and expenses incurred by SPAEC Supplier in the enforcement and protection of its rights under this Agreement;

(b) in the event of termination by Company for SPAEC Supplier's default, Company shall be entitled, as liquidated damages (and not as a penalty), and, provided that such amount is paid by Seller within 30 calendar days of Company's notice of such termination, as its exclusive remedy for SPAEC Supplier's default hereunder, to receive cover from SPAEC Supplier equal to the sum of (i) the positive difference, if any, in price (i.e., Replacement Price less SPAEC Price) multiplied by the quantity of Product not delivered due to the termination of the Agreement for the remaining Term of this Agreement and for which no alternative compliance payments were required; (ii) actual, reasonable and verifiable third party fees, including broker fees and legal fees and expenses incurred by Company in the enforcement and protection of its rights under this Agreement; and (iii) any alternative compliance payments paid by Company as a result of SPAEC's failure to deliver Product as required under this Agreement.

**11.3 Exclusive Remedy.** The remedies set forth in this Article 11 are the sole and exclusive remedies in the event of a default of a party's obligations to sell or purchase product,

and a party's liability shall be limited as set forth in this article. All other remedies or damages for failure to sell or purchase product at law are hereby waived.

**11.4 Limitation of Liability.** In the event of a default, the defaulting party's liability shall be limited to direct, actual damages only, and such direct, actual damages shall be the sole and exclusive remedy hereunder. In no event shall any other liability be incurred by either party for any obligations which arise under this agreement, including (but not limited to) consequential, incidental, punitive, exemplary, special, or indirect damages in tort, contract, or otherwise (except to the extent such damages are recovered against a party hereunder by an unaffiliated third party).

## **ARTICLE 12 INDEMNIFICATION**

**12.1 Indemnification Obligation.** Each Party, to the extent permitted by law, shall indemnify, defend and hold harmless the other Party, its affiliated companies, and all of their directors, officers, employees, agents and representatives from and against all claims, liabilities, damages, losses or expenses to the extent arising out of any negligence, willful misconduct, breach of contract or violation of law of, or by, the indemnifying Party, its employees, agents, subcontractors, or assigns in the performance of this Agreement. In the event the Parties are jointly at fault, each Party shall indemnify the other in proportion to its relative fault.

**12.2 Scope of Indemnification.** The claims, liabilities, damages, losses or expenses covered for which indemnification may be sought under this Article 12 include, but are not limited to, settlements, judgments, court costs, attorneys' fees and other litigation expenses, fines, and penalties arising out of actual or alleged (a) injury to or death of any person, including employees of Company or SPAEC Supplier, or (b) loss of or damage to property, including property of the Company or SPAEC Supplier, or (c) breach of contract or (d) damage to the environment.

**12.3 Notice.** A Party seeking indemnification under this Article 12, shall give written notice to the indemnifying Party as soon as reasonably practicable after becoming aware of the facts and circumstances which may give rise to any claims, liabilities, damages, losses or expenses for which indemnification may be sought under this Article 12.

## **ARTICLE 13 CONFIDENTIALITY**

**13.1 Confidentiality.** Except as provided in this Article 13, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the Term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

**13.2 Required Disclosure.** If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a Governmental Authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the Governmental Authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that Governmental Authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

**13.3 Tax Treatment Exception.** Notwithstanding any provision of this Agreement to the contrary, the legal obligations of confidentiality hereunder do not extend to the U.S. federal or state tax structure or the U.S. federal or state tax treatment of any transaction hereunder. If any U.S. federal or state tax analyses or materials are provided to a Party, such Party is free to disclose any such analyses or materials without limitation.

**13.4 Survival.** The Parties obligations under this Article 13 shall survive for a period of one (1) year following the expiration or termination of this Agreement.

## **ARTICLE 14 GOVERNING LAW; WAIVER OF TRIAL BY JURY**

**14.1 Governing Law.** This Agreement shall be construed, enforced, and performed in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to principles governing conflicts of law.

**14.2 Waiver of Trial By Jury.** As a material inducement to each party to enter into this agreement, the parties each hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating hereto, any product or the transactions contemplated hereby. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

## **ARTICLE 15 MISCELLANEOUS**

**15.1 Entire Agreement.** This Agreement, together with any attachments or exhibits specifically referenced herein, constitutes the entire agreement between the SPAEC Supplier and the Company with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by the Company and the SPAEC Supplier.

**15.2 Severability.** In the event that any provision of the Agreement shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of the Agreement either void or unenforceable, and all other provisions shall remain in full force and

effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

**15.3 Waiver.** No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof is breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

**15.4 Notices.** All notices, payments and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or, with respect to communications other than payments, by facsimile transmission, if the original communication is delivered by reputable overnight courier. Communications to the Company and SPAEC Supplier shall be sent to the addresses set forth in Appendix C or to such other person at such other address as a Party may designate by like notice to the other Party. Communication shall be effective when received. Notice received after the close of the Business Day shall be deemed received on the next Business Day.

**15.5 Netting and Setoff.** If Company and SPAEC Supplier are required to pay any amount under this Agreement on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the Party owed the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, Liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement and/or any other contract between the Company and SPAEC Supplier, if any, may be offset against each other, set off or recouped therefrom. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b) (6) of the Bankruptcy Code.

**15.6 Disputes.** The Company and the SPAEC Supplier shall use good faith and reasonable commercial efforts to informally resolve all disputes arising out of the implementation of this Agreement. Any dispute between the Company and the SPAEC Supplier under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

**15.7 Compliance with Laws.** Except as otherwise expressly provided in this Agreement, each Party shall comply, at its own expense, with the provisions of all laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a Governmental Authority relating to this Agreement and the transactions hereunder.

**15.8 Remedies Cumulative.** No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and

remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

**15.9 Binding Effect; Limitation of Benefits.** This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and, subject to the provisions of Article 7 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement. The Company does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with SPAEC Supplier.

**15.10 No Partnership or Joint Venture.** This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between Company and SPAEC Supplier, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise.

**15.11 Auditing and Records.** During the Term, Company may, at reasonable times and on reasonable notice, audit SPAEC Supplier's records pertaining to the Product and this Agreement and SPAEC Supplier shall keep and maintain all reasonable records relating to this Agreement, including with respect to those records necessary for performing and verifying any calculations made hereunder, or necessary to verify SPAEC Supplier's performance hereunder, for a period of three (3) years following termination of this Agreement.

**15.12 Survival.** Except as otherwise expressly provided in this Agreement, obligations, limitations, exclusions and duties which by their nature extend beyond the expiration or termination of this Agreement, as well as any other provisions necessary to interpret the respective rights and obligations of the Parties hereunder, shall survive the expiration or earlier termination of this Agreement.

**15.13 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.



**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

**ATTEST:**

[Insert Company Name]

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

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

Name: [Insert Name]

Name: [Insert Name]

Title: [Insert Title]

Title: [Insert Title]

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

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

**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

**ATTEST:**

[Insert SPAEC Supplier Name]

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

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

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

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

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

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

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

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

**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT  
PURCHASE AND SALE AGREEMENT**

## APPENDIX A – GUARANTY AGREEMENT

GUARANTY (this “Guaranty”), dated as of [Insert Date], made by \_\_\_\_\_ (the “Guarantor”), a corporation organized and existing under the laws of [Insert Law References] in favor of [Insert Company Name] (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

Terms not defined herein take on the meaning given to them in the SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT PURCHASE AND SALE AGREEMENT(s). Guarantor enters into this Guaranty in consideration of, and as an inducement for Guaranteed Party having entered into or entering into the “Agreement(s)” with [Insert Name] (Name), a [Insert State] (State) corporation (the “SPAEC Supplier”), which may involve the extension of credit by the Guaranteed Party. Guarantor, subject to the terms and conditions hereof, hereby unconditionally and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to an applicable grace period and upon demand in writing from the Guaranteed Party to the Guarantor’s attention at the address for Guarantor set forth in Section 11 hereof of any and all amounts payable by the SPAEC Supplier to the Guaranteed Party arising out of the Agreement(s), and,

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the SPAEC Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall Option 1 (in no event exceed [Insert Limit Amount].) Option 2 (in no event exceed the lesser of [Insert Limit Amount] or the sum of the Credit Exposures Amounts under the Agreement(s).) All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the SPAEC Supplier, and any right to require a proceeding first against the SPAEC Supplier.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Document or any person (including the SPAEC Supplier) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed

Obligation(s) or liability of the SPAEC Supplier to the Guaranteed Party; or (iii) compromise or subordinate any Guaranteed Obligation(s) or liability of the SPAEC Supplier to the Guaranteed Party including any security therefore.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the SPAEC Supplier concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the SPAEC Supplier; (ii) the rendering of any judgment against the SPAEC Supplier or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (iv) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the SPAEC Supplier and the Guaranteed Party; (v) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the SPAEC Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the SPAEC Supplier or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the SPAEC Supplier, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the SPAEC Supplier of amounts to be paid by it under the Agreement(s) or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the SPAEC Supplier, any other guarantor, the Guaranteed Party or any other corporation or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.
5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the SPAEC Supplier or any collateral security or guaranty or right of offset held by the Guaranteed Party therefore.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms here of shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in

exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice of demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with the terms of the underlying Agreement(s).
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor agrees that its liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.
11. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor:

[Insert Guarantor]

If to the Guaranteed Party:

[Insert Company Name] c/o FirstEnergy Corp.  
Attn: Credit Risk Management & Risk Control  
341 White Pond Drive  
Akron, OH 44320  
Telephone: (330) 315-6894  
Facsimile: (330) 436-1901

12. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.
13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement(s).
14. This Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement, Articles of Incorporation or by-laws] or any law, regulation or contractual restriction binding on it or its assets.

16. This Guaranty and the rights and obligations of the SPAEC Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree to the exclusive jurisdiction of State and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Party each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
18. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No Trustee or shareholder of Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and such Guaranty shall not be enforceable against any such Trustee in their or his or her individual capacities or capacity. This Guaranty shall be enforceable against the Trustees of Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to Guarantor, its shareholders or Trustee shall look solely to the trust estate of Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first above written to be effective as of the earliest effective date of any of the Agreement(s).

(GUARANTOR)  
[Insert Guarantor]

Accepted and Agreed to:  
[Insert Name]

By:

By: [Insert Company Name]

Name: [Insert Name]  
Title: [Insert Title]

Name: [Insert Name]  
Title: [Insert Title]

## APPENDIX B - LETTER OF CREDIT DOCUMENTATION

### Sample Letter of Credit

[Insert Date]

Letter of Credit No. [Insert Credit No]

To: Beneficiary Name (“Beneficiary”)

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this “Letter of Credit”) for the account of [Insert Applicant Name] (the “Applicant”), in the aggregate amount of \$[Insert Amount], effective immediately and available to you at sight upon demand at our counters at [Insert Location] and expiring 364 days from date of issuance , unless terminated earlier or automatically extended, in accordance with the provisions hereof.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in paragraph 10 hereof. This Letter of Credit may be drawn upon an Event of Default under the Agreement(s) between the Applicant and you, dated [Insert Date]
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (New York, NY time<sup>1</sup>) on such Business Day to [Insert Bank] , [Insert Address] (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary. Authorized Officer shall mean President, Treasurer, any Vice President or any Assistant Treasurer.
4. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing, if delivery of this requisite document is made prior to 11:00 AM (New York, NY time) on a Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 herein above.

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<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a business day should be adjusted accordingly



5. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not exceeding three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
6. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, or (iii) will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to the Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this irrevocable standby Letter of Credit for such additional one (1) year period.
7. As used herein:

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fed wire system.

8. This Letter of Credit is assignable and transferable, in accordance with Annex 4, to an entity who you certify to us in the form of Annex 4, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law. Transfers fees shall be borne by the Applicant.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 4 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

9. We certify that as of [Insert Date] we [Insert Bank] satisfy the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or “A2” from Moody’s Investor Service Inc.
10. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. [Insert Credit No]. Partial drawings are permitted hereunder.
11. Faxed document(s) are acceptable. Presentation by fax must be made to fax number [Insert Fax] confirmed by telephone to [Insert Phone].
12. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this letter of credit to be closed for business on the last day of presentation, the expiration date of this letter of credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
134. This original letter of credit has been sent to the Company located at [Insert Address] above (as per Applicant’s instructions). The aggregate amount paid to the Company during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Company. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of the Company.

Very truly yours,

(Bank)

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

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

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

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

*Annex 1 to Letter of Credit*

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]  
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. "Pursuant to Paragraph 2 of the Letter of Credit No. [Insert Credit No.], dated [Insert Date],, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$[Insert Dollars], inasmuch as there is an Event of Default under any Agreement between the Applicant and us.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

[Insert Beneficiary Name]

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

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

*Annex 2 to Letter of Credit*

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

ON [Business Day immediately succeeding date of presentation]

PAY TO: [Insert Beneficiary Name]

\$ [Insert Dollars]

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
[Insert Credit No.]

OF

[Insert Bank]  
[Insert Address]

The [Insert Company]

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

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

*Annex 3 to Letter of Credit*

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. [Insert Credit No.]  
[Insert Date]

To: [Insert Bank]  
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

[Insert Beneficiary Name]

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

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

cc: [Insert Applicant Name]

*Annex 4 to Letter of Credit*

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]  
[Insert Address]

To Whom It May Concern:  
Re: Credit [Insert Credit No.]  
Issued by: [Insert Name]  
Advice No.: [Insert Advise No.]

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

[Insert Transferee Name]  
(Name of Transferee)

[Insert Address]  
(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

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

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

Enclosed is a certified check in the amount of \$ [Insert Amount] in payment of your transfer commission and in addition we agree to pay to you on demand any expenses that may be incurred by you in conjunction with this transfer.

Very Truly Yours,

[Insert Signature of Company]  
(Signature of the Company)

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

[Insert Signature of Authenticating Party]

(Authorized signature of authenticating party)

Name: [Insert Name]

Title: [Insert Title]

**APPENDIX C – SPAEC TRANSACTION CONFIRMATION**

This Transaction Confirmation is being provided pursuant to and in accordance with the “Solar Photovoltaic Alternative Credit Purchase and Sale Agreement” dated [Insert Date] (the “Agreement”) between Company and SPAEC Supplier. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

**Confirmation Effective Date:** [Insert Date]

BY AND BETWEEN,

**Company Name:** [Insert Company Name]

AND

**SPAEC Supplier Name:** [Insert SPAEC Supplier Name]

**Product:** Solar Photovoltaic Alternative Energy Credits (SPAEC)

**SPAEC Quantity:** xxx SPAECs per Reporting Year / xxxx SPAECs for the Delivery Period

**Delivery Period:** 00:01a.m. On June 01, 2019 to midnight May 31, 2021

**SPAEC Price** = \$x.xx/MWh as bid by SPAEC Supplier

**SPAEC Supplier Account:**

Bank Name: [Insert Bank Name]

(Financial Institution) ABA# [Insert ABA#]

Account # [Insert Account Number]

Account Name: [Insert account name]

Re: SPAEC Purchase



## Address for Notices

The address for any notices provided pursuant to the SPAEC Supplier Agreement shall be the following:

If to the Supplier:

Insert Company Name]  
[Insert Name]  
[Insert Address]  
Telephone: [Insert Phone]  
Facsimile: [Insert Fax]  
Email: [Insert Email]

If to the Company:

FirstEnergy Corp.  
Dean Stathis – Director Regulated Commodity Sourcing  
P.O. Box 16001  
Reading, PA 19612-6001  
Telephone: (610) 921-6766  
Facsimile: (610) 939-8542  
Email: [dstathis@firstenergycorp.com](mailto:dstathis@firstenergycorp.com)

Copy to:

FirstEnergy Corp.  
Eileen M. Mikkelsen – VP Rates & Regulatory Affairs  
76 South Main Street 8th Floor  
Akron, OH 44308  
Telephone: (330) 384-5166  
Facsimile: (330) 315-4358  
Email: [mikkelsene@firstenergycorp.com](mailto:mikkelsene@firstenergycorp.com)

and

FirstEnergy Corp.  
Tori L. Giesler  
P.O. Box 16001  
Reading, PA 19612-6001  
Telephone: (610) 921-6658  
Facsimile: (610) 939-8655  
Email: [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)