

**APPLICATION FOR STANDARD CONTRACT
BY A QUALIFYING COGENERATOR OR SMALL POWER PRODUCER**

1. **Name of Company**, a **[State]** limited liability company, with address of **[Street, City, ZIP]**, hereinafter called "Seller," hereby requests that North Carolina Eastern Municipal Power Agency, hereinafter called "NCEMPA" or "Buyer", purchase the electricity delivered to the electric distribution system of the **[Name of City or Town]**, North Carolina, hereinafter called "City", a member of NCEMPA, by Seller's "Qualifying Cogeneration or Small Power Production Facility" solar photovoltaic generation facility located at or near **[Street Address]** (the "Facility"), in accordance with (i) the terms hereof, (ii) NCEMPA's Avoided Cost Rate Schedule for Seller (Attachment 1), (iii) the Terms and Conditions for the Purchase of Electric Power (Attachment 2), (iv) the annual security requirements (Attachment 3), (v) the Interconnection Agreement executed between the Seller and City (the "Interconnection Agreement", Attachment 4), (vi) the Facility's PURPA QF Form 556 self-certification filed with the Federal Energy Regulatory Commission ("FERC") (Attachment 5), (vii) the Facility's application with and certification by the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity ("CPCN") or Report of Proposed Construction ("ROPC") (Attachment 6). Copies of each of the Attachments described herein are attached to and made a part of this Agreement. Seller and Buyer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

2. Electricity supplied by Seller and sold to NCEMPA hereunder shall conform to the requirements of the Interconnection Agreement. The Facility shall have a Maximum Generation Capacity of **[]** kW (AC) and an Estimated Annual Energy Production of **[]** kWh. The point of delivery of electric energy generated by the Facility shall be the Point of Interconnection (as such term is defined and identified in the Interconnection Agreement). Seller shall deliver and sell, and NCEMPA shall receive and buy, only electrical output from the Facility; Seller shall retain all associated renewable energy credits and renewable attributes.

3. Force Majeure.
 - a. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party is unable to prevent, avoid or overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) unusual weather events, such as extreme storms, hurricanes and floods; extreme lightning, volcanoes and earthquakes; (ii) explosions or fires arising from extreme lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes; and (v) emergencies or abnormal conditions affecting City's distribution or transmission system.

- b. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder) if, and to the extent that, such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 3 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and resume performance of its obligations hereunder as soon as practicable thereafter; provided further, however, that neither Party shall be excused from making any payments and paying any unpaid amounts due in respect of electricity delivered to Buyer by Seller prior to the Force Majeure Event performance interruption.
 - c. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. If at the end of such thirty (30) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other; provided that neither Party shall be excused from making any payments and paying unpaid amounts that have accrued and become due and payable prior to the Force Majeure Event performance interruption or for any amounts due under Section 6 of this Agreement.
4. Upon the acceptance hereof by NCEMPA, evidenced by the signature of its authorized representative in the space provided below, this document together with attachments hereto shall become an agreement for Seller to deliver and sell to NCEMPA and for NCEMPA to receive and purchase from Seller the electricity generated and declared by Seller from the Facility at the rates, in the quantities, for the term, and upon the terms and conditions set forth herein.
5. NCEMPA shall purchase and pay for the energy generated by the Facility and delivered by Seller to NCEMPA at the Point of Interconnection during the term and at the rate set forth in the Avoided Cost Rate Schedule attached hereto. Title and risk of loss of all energy generated by the Facility shall pass to NCEMPA at the Point of Interconnection. Payment by NCEMPA for energy generated by the Facility and delivered to the Point of Interconnection shall be due fifteen (15) calendar days after the issue date of the invoice. Any payment due to NCEMPA from Seller pursuant to the terms hereof shall be due fifteen (15) calendar days after the issue date of the invoice.
6. Term and Termination.
 - a. The term of this Agreement shall commence on the Commercial Operation Date of the Facility and extend for a period of [Insert number of years] (XX) years (the "Initial Term"). The Commercial Operation Date shall be defined as the date the City approves parallel operation (as defined in the Interconnection Agreement), or the date Seller certifies in writing that the Facility is capable of achieving its Maximum

- Generation Capacity, whichever is later; provided, however, in no case shall the Initial Term commence later than twelve (12) months after the Acceptance Date of this Agreement (the date that this Agreement is signed by the Buyer's authorized representative below) or **[Insert Commercial Operation Date]**, whichever is earlier.
- b. Seller shall promptly provide advance written notice to NCEMPA of any changes to the expected Commercial Operation Date.
 - c. The term of this Agreement shall continue automatically after the Initial Term for additional one (1) year terms only at the Variable Energy Credits specified in Duke Energy Progress, Inc.'s ("DEP") Cogeneration and Small Power Producer Schedule or a successor Schedule in effect at the end of the Initial Term, or in effect at the end of each applicable one (1) year renewal term, until terminated by either Buyer or Seller by giving the other Party thirty (30) days written notice. If DEP's Cogeneration and Small Power Producer Schedule is superseded by a rate schedule that no longer includes a Variable Energy Credit, NCEMPA will determine a substitute rate that provides Seller with compensation comparable to what Seller would have received if the Variable Energy Credit in DEP's Cogeneration and Small Power Producer Schedule had been available. The Initial Term of the Agreement, together with any automatic continuances under this Section, shall be referred to as the "Contract Period."
 - d. In the event that this Agreement is terminated by either Party prior to the end of the Initial Term or as a result of a Force Majeure event that lasts more than one hundred eighty (180) days as described in Section 3.c. of this Agreement and the payment rate hereunder was the Fixed Long-Term Capacity and Energy Rate specified in the Avoided Cost Rate Schedule (Attachment 1), Seller shall pay to Buyer, upon such termination, an amount equal to the positive difference between the aggregate payments actually made by Buyer to Seller for energy and/or capacity purchased during the term of this Agreement and the aggregate amount of payments Buyer would have made to Seller if the payment rate hereunder had been the Variable Energy Credit and Variable Capacity Credit (as specified in DEP's Cogeneration and Small Power Producer Schedule) applicable during the Initial Term of this Agreement and as updated by DEP up until the date of termination, plus interest. The interest shall be the weighted average rate of NCEMPA's outstanding debt in the calendar year previous to that in which the Agreement was commenced. If, as of the date of termination, DEP's Cogeneration and Small Power Producer Schedule has been superseded by a rate schedule that no longer includes Variable Energy and/or Variable Capacity Credits, NCEMPA will determine a substitute methodology for calculating the termination charge that provides NCEMPA with compensation comparable to what NCEMPA would have received if the Variable Energy and Variable Capacity Credit in DEP's Cogeneration and Small Power Producer Schedule had been available.
 - e. Prior to the Initial Term of this Agreement, upon not less than 30 days written notice, Buyer shall require Seller to provide Buyer with security for the obligation set forth in Section 6.d. above. Such security may, at the sole discretion of the Buyer, be in the

form of (i) a payment guaranty from an affiliate of Seller, having a credit rating of BBB- or higher by Standard & Poor's or Baa3 or higher by Moody's, (ii) a cash deposit, (iii) a letter of credit from a financial institution reasonably acceptable to Buyer, or (iv) other form approved by Buyer. The annual security dollar amounts during the Initial Term of this Agreement are specified in Attachment 3 to this Agreement.

7. Seller hereby certifies that the Facility is "new capacity," as defined by FERC, and that construction will commence after the date hereof.
8. Notwithstanding any other provision of this Agreement, NCEMPA may terminate this Agreement upon 10 days written notice if (i) construction of the Facility is not complete within twelve (12) months of the Acceptance Date of this Agreement, (ii) the Facility is not constructed in accordance with the requirements of the Interconnection Agreement, or (iii) the Interconnection Agreement has been terminated.
9. If both NCEMPA and Seller are required to render payment to the other party in the same month, whether pursuant to this Agreement or otherwise, then such amounts may be aggregated and the Parties may discharge their obligation to pay through netting with the Party owing the greater aggregate amount paying the other Party 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 under other agreement(s) may be offset against each other, set off or recouped therefrom.
10. Upon five (5) business day's written notice, Seller hereby agrees to grant employees or agents of Buyer, City, Duke Energy Progress and/or Dominion North Carolina Power access to the Facility for equipment and/or safety inspections, or for other reasons as required by the Interconnection Agreement.
11. Assignment.
 - a. Except as otherwise provided in subsections b. and c. of this Section 11, this Agreement may not be assigned or transferred by either Party without the prior consent of the other Party, which consent shall not be unreasonably withheld.
 - b. Buyer acknowledges and agrees that, without the consent of but upon notice to Buyer, Seller may assign or create a security interest in its rights and interest under or pursuant to this Agreement (with the exception of any security provided pursuant to Section 6.e. above) in favor of any Financing Party or Parties. As used in the preceding sentence, "Financing Party" means any bank, insurance company or other financial institution, including any trustee or agent representing any such entity, providing any form of debt financing (whether construction, bridge loan, permanent, refinancing or otherwise) with respect to the Facility to Seller or any of its Affiliates or equity holders.
 - c. Buyer shall provide such assistance as Seller may reasonably request in connection with obtaining financing for the Facility pursuant to this Section. Without limiting the

foregoing, Buyer hereby consents to the collateral assignment of this Agreement (with the exception of any related security instrument contemplated by Section 6 above) in connection with any financing contemplated by this Section 11. If requested by Seller, Buyer shall enter into a consent to assignment with the Financing Party or Parties regarding this Agreement containing provisions that are typically provided to financial institutions in similar project financings, including the right to render and receive performance under this Agreement, and giving the Financing Parties copies of notices delivered to Seller under this Agreement. Upon request by Buyer, Seller shall promptly reimburse Buyer for any reasonably documented out of pocket costs and expenses incurred by Buyer in connection with providing assistance to Seller in connection with any financing transaction contemplated by this Section 11.

12. This Agreement is governed by and construed in accordance with the laws of the state of North Carolina, without regard to conflict of laws principles.

13. Any amendment or modification to this Agreement shall be in writing and signed by both parties.

14. Special Provisions Related to Liability and Insurance

- a. Seller shall operate and maintain the Facility and its Interconnection Facilities in a safe and prudent manner, conforming with all applicable laws and regulations. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties or liabilities Buyer incurs as a result of Seller's failure to obtain or maintain any governmental authorizations or permits required for construction and operation of the Facility, including, but not limited to, failure to fully adhere to FERC regulatory requirements applicable to Seller and the Facility.
- b. Seller shall defend, hold harmless and indemnify Buyer and its directors, commissioners, officers, employees, and agents against and from any and all losses, liabilities, damages, claims, costs, charges, demands, or expenses, including attorneys' fees, for injury or death to persons, including employees of Buyer, and damage to property, including property of Buyer and City, arising out of or in connection with Seller's negligence or willful misconduct in (1) the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the Facility, and/or (2) the making of replacements, additions, betterments to, or reconstruction of Interconnection Facilities; Provided, however, Seller shall not be obligated to indemnify Buyer for any loss, liability, damage, claim, cost, charge, demand, or expense resulting from Buyer's own negligence or willful misconduct.
- c. The provisions of subparagraph b. of this Paragraph 14 shall not be construed to relieve any insurer of its obligations to pay any claims in accordance with the provision of any valid insurance policy.
- d. Seller shall meet the standards and rules set forth in subparagraph a. of this Paragraph 14. Commencing with the initiation of construction activities of the Facility and

continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall procure and maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with applicable statutory requirements and Employer's Liability Insurance of not less than \$500,000 per each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; and (d) Property Damage insurance on the Facility written on an all risk of loss basis.. Seller shall provide Buyer thirty (30) days written notice prior to cancellation, termination, alteration, or material change by Seller of such insurance.

15. If any provision or portion of this Agreement shall for any reason be held or determined to be invalid or illegal or unenforceable by any court or government agency of competent jurisdiction, such portion or provision shall be deemed separate and independent, and the remainder of this Agreement shall remain in full force and effect. The Parties shall endeavor by good faith negotiations to replace any invalid, illegal or unenforceable provision with a valid, legal and enforceable provision, the effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

16. Notices

- a. The Parties shall designate representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This designation shall include, but not be limited to, the name, title, company name, company street address, office and mobile phone numbers, and e-mail addresses of the representatives. Unless otherwise provided in this Agreement or the Interconnection Agreement between the Seller and the City, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered by a recognized national courier service, or sent by first class mail, postage prepaid, to the person specified. Any notice or request required or permitted to be given by either Party to the other Party and not required by this Agreement or the receiving Party to be given in writing may be so given by telephone, facsimile or e-mail to the telephone, facsimile numbers and e-mail addresses provided.
 - b. Either Party may change the information provided in Section 16.a. by giving ten (10) business days written notice to the other Party prior to the effective date of the change.
17. Seller warrants, represents and certifies to NCEMPA that, as of the Acceptance Date, it is not included on a list of persons engaged in investment activities in Iran created and maintained by the North Carolina Department of State Treasurer pursuant to Section 143C-6A-4 of the

Iran Divestment Act of 2015, Article 6A, Chapter 143C of the General Statutes of North Carolina, as amended, and that it will not utilize the services of any subcontractor that is listed on such list in connection with its duties and obligations under this Agreement.

18. Upon request by Buyer, Seller shall promptly pay to Buyer any and all legal and consulting costs reasonably incurred by Buyer in connection with negotiating, executing, implementing and administering this Agreement, including any attachments hereto, and specifically including but not limited to reasonable legal fees incurred in connection with putting in place the security required under Section 6.e, collecting Early Termination charges under Section 6.d, or consenting to a collateral assignment under Section 11.

[Signatures follow]

Witness as to Seller:

[Legal Name of Seller]

Seller

By: _____

Print Name: _____

Title: _____

This _____ day of _____, 20_____

ACCEPTED: North Carolina Eastern Municipal Power Agency

By: _____

Print Name: _____

Title _____

This _____ day of _____, 20_____ (the "Acceptance Date")

ATTACHMENT 1
NCEMPA'S AVOIDED COST RATE SCHEDULE FOR SELLER

ATTACHMENT 2
TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER

1) PURCHASE AGREEMENT

These “Terms and Conditions” provide a mechanism through which North Carolina Eastern Municipal Power Agency, hereafter called NCEMPA, will agree to purchase energy or capacity or both from an Eligible Qualifying Facility. An Eligible Qualifying Facility is a facility that is and continues to qualify as a “Qualifying Cogenerator or Small Power Production Facility” under Section 201 of The Public Utilities Regulatory Policies Act of 1978 (PURPA), and the rules set forth by the FERC. These Terms and Conditions do not provide for the sale of any electric service by NCEMPA to Seller. If Seller requires supplementary, standby, interruptible, or other type of power, Seller shall enter into a separate retail service agreement or amend an existing retail service agreement, as appropriate, with the City in accordance with the host City’s applicable retail electric service tariffs.

- (a) Description - This Purchase Agreement (hereinafter sometimes termed "Agreement") shall consist of (1) NCEMPA’s form of Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer when signed by Seller and accepted by NCEMPA, (2) the applicable Avoided Cost Rate Schedule, (3) the Interconnection Agreement executed between the Seller and the City, (4) the Facility’s PURPA QF Form 556 self-certification filed with the Federal Energy Regulatory Commission (“FERC”), (5) the Facility’s application with and certification order of the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity (“CPCN”) or Report of Proposed Construction (“ROPC”), and (6) these Terms and Conditions for the Purchase of Electric Power (hereinafter referred to as "Terms and Conditions"), and all changes, revisions, alterations therein, or substitutions therefor lawfully made.
- (b) Applicability - This Purchase Agreement shall be applicable only if Seller's facility is and continues to qualify as an Eligible Qualifying Facility, as defined above.
- (c) Application of Terms and Conditions and Schedules - This Agreement is made expressly subject to these Terms and Conditions, and subject to all applicable Schedules, and any changes therein, substitutions thereof, or additions thereto lawfully made, provided no change may be made in rates or in essential terms and conditions of this Agreement except by agreement of the parties to this Agreement.
- (d) Conflicts - In case of conflict between any provision of (i) the Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer and these Terms and Conditions, the provision of the attached Application shall

prevail, (ii) the Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer and these Terms and Conditions, on the one hand, and the Interconnection Agreement, the provision of the Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer and these Terms and Conditions shall prevail, and (iii) an Avoided Cost Rate Schedule and these Terms and Conditions, the provision of the Avoided Cost Rate Schedule shall prevail.

- (e) Suspension of Sales Under Agreement at Seller's Request - If Seller is temporarily unable to produce the electricity contracted for due to physical destruction of, or damage to, the Facility, NCEMPA will, upon written request of Seller, and for a period NCEMPA deems as reasonably required to replace or repair the Facility, suspend billing under this Agreement, exclusive of any charges identified in the Interconnection Agreement between Seller and the City, effective with the beginning of the next Monthly Billing Period.
- (f) Termination of Agreement at Seller's Request - If Seller desires to terminate this Agreement, NCEMPA will agree to such termination if all bills rendered by NCEMPA for services previously rendered to Seller, plus any applicable termination charges, have been paid. Termination charges shall consist of (1) a termination charge for equipment associated with additional facilities installed by NCEMPA for the purpose of interconnecting Seller's Facility, including but not limited to costs due to removal, disconnection and/or disposal of such equipment, and (2) any applicable Early Contract Termination charges as set forth in Section 5(a) of these Terms and Conditions.

NCEMPA may, at its sole discretion, waive the termination charges described in the foregoing paragraph (f) if NCEMPA has secured or expects to secure from a new owner or operator of the Facility an agreement satisfactory to NCEMPA for the delivery of electricity to NCEMPA for a term not less than the unexpired portion of this Agreement.

- (g) NCEMPA's Right to Terminate or Suspend Agreement – NCEMPA, in addition to all other legal remedies, may either terminate this Agreement or suspend purchases of electricity from Seller (1) for any default or breach of any material obligation of Seller under this Agreement (other than in respect of any other matter expressly addressed elsewhere in this subsection (g)); provided that Seller shall have a period of 30 days from the receipt of written notice from NCEMPA of such failure within which to cure such default or breach, or if such default or breach is not capable of cure within such 30 day period, Seller shall have a reasonable period to complete such cure if Seller promptly undertakes action to cure such default or breach within such 30 day period and thereafter diligently prosecutes the same to completion and Seller uses commercially reasonable efforts to complete such cure within 60 days after the receipt of notice from NCEMPA, (2) for fraudulent or unauthorized use of the NCEMPA or City meter, (3) for failure to pay any undisputed amount owed to NCEMPA under this Agreement within 30 days after receipt of written notice from NCEMPA of such

past due amount, or (4) due to Seller's inability to deliver to NCEMPA the quality of electricity as specified in these Terms and Conditions, the Interconnection Agreement or the Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer, provided that Seller shall have a period of 30 days from the receipt of written notice from NCEMPA to cure such inability to deliver, or if such inability to deliver is not capable of cure within such 30 day period, Seller shall have a reasonable period to complete such cure if Seller promptly undertakes action to cure such inability to deliver within such 30 day period and thereafter diligently prosecutes the same to completion and Seller uses commercially reasonable efforts to complete such cure within 60 days after the receipt of notice from NCEMPA.

No such termination or suspension, however, will be made by NCEMPA without written notice delivered to Seller, personally or by mail, identifying the specific subsection of Section 1(g) above that has been violated, except that no notice needs to be given by NCEMPA in instances set forth in Section 1(g)(2) above.

Failure of NCEMPA to terminate this Agreement or to suspend the purchase of electricity at any time after the occurrence of grounds therefor, or to resort to any other legal remedy or to exercise any one or more of such alternative remedies, shall not waive or in any manner affect NCEMPA's right later to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur.

Any suspension of the purchase of electricity by NCEMPA or termination of this Agreement upon any authorized grounds by either Party shall in no way operate to relieve Seller of Seller's liability to compensate NCEMPA for services and/or facilities supplied, nor shall it relieve Seller (1) of Seller's liability for the payment of any monthly charges during the period of suspension, nor (2) of Seller's liability for damages, if this Agreement has been terminated, in the amount of (a) any monthly charges which would have been payable during the unexpired term of this Agreement plus (b) the Early Contract Termination charge set forth in Section 5(a) of these Terms and Conditions.

2) CONDITIONS OF PURCHASE

NCEMPA is not obligated to purchase electricity from Seller unless and until: (1) NCEMPA's form of Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer is executed by Seller and accepted by NCEMPA; (2) Seller executes an Interconnection Agreement with the City; (3) in cases where it is necessary to cross property owned by any person not a party to this Agreement in order for Seller to deliver electricity to the City's system, Seller conveys or causes to be conveyed to NCEMPA and City, without cost to NCEMPA or City, a right-of-way easement, satisfactory to NCEMPA and City, across such property which will allow for the construction, maintenance, and operation of City's lines and facilities, necessary to receive electricity from Seller; provided, however, in the absence of a formal conveyance, NCEMPA and City nevertheless, shall be vested with an

easement over Seller's premises authorizing City to do all things necessary, including the construction, maintenance, and operation of its lines and facilities for such purpose; and (4) any inspection certificates or permits that may be required by law in the local area are furnished to NCEMPA or the City, or where not required by law, an inspection by a NCEMPA or a City-approved inspector shall be made at Seller's expense.

3) CONTRACT CAPACITY

- (a) The Contract Capacity shall be equal to the Maximum Generation Capacity as specified in Section 2 of the Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer. In cases where any change is required in the City's facilities due to the actual capacity delivered exceeding the Contract Capacity or due to Seller requesting an increase in the capacity of the City's facilities, NCEMPA may require Seller to execute a new Agreement or amend this Agreement, to establish a new Contract Capacity. If the City's facilities cannot be upgraded to accept such actual or requested increase, then upon written notice, Seller shall not exceed the existing Contract Capacity or such amount in excess thereof as NCEMPA determines, in its sole discretion, it is able to accept.
- (b) If Seller increases its Maximum Generation Capacity without adequate notice to NCEMPA, and without receiving NCEMPA's consent, and such unauthorized increase causes loss or damage to the City's facilities, the cost of making good such loss or repairing such damage shall be paid by Seller.

4) CONTRACT ENERGY

The Contract Energy shall be the Estimated Annual Energy Production, as defined in Section 2 of the attached Application for Standard Contract by a Qualifying Cogenerator or Small Power Producer, delivered at the Point of Interconnection (as such term is defined and identified in the Interconnection Agreement).

5) EARLY CONTRACT TERMINATION, REDUCTION IN CONTRACT ENERGY, AND INCREASE IN CONTRACT CAPACITY

(a) Early Contract Termination

In the event that this Purchase Agreement is terminated by Seller prior to the end of the Initial Term and the payment rate hereunder was the fixed long-term Capacity and Energy rates specified in the Avoided Cost Rate Schedule (Attachment 1), Seller shall pay to NCEMPA, upon such termination, an amount equal to the positive difference between the aggregate payments actually made by NCEMPA to Seller for Energy and/or Capacity during the term of this Agreement and the aggregate amount of payments NCEMPA would have made to Seller if the payment rate hereunder had been the Variable Energy Credit and Variable Capacity Credit as specified in Duke Energy Progress, Inc.'s ("DEP") Cogeneration and Small Power Producer Schedule (attached to

Attachment applicable on the Acceptance Date and as updated by DEP prior to the date of termination, plus interest. The interest shall be the weighted average rate for new debt issued by NCEMPA in the calendar year previous to that in which this Agreement was commenced. If, as of the date of termination, DEP's Cogeneration and Small Power Producer Schedule has been superseded by a rate schedule that no longer includes Variable Energy Credit and/or Variable Capacity Credit, NCEMPA will determine a substitute methodology for calculating the termination charge that provides NCEMPA with compensation comparable to what NCEMPA would have received if the Variable Energy Credit and Variable Capacity Credit in DEP's Cogeneration and Small Power Producer Schedule had been available.

(b) Reduction In Contract Energy

Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Initial Term, Seller shall deliver to Buyer no less than seventy percent (70%) of the average amount of Contract Energy delivered over the two previous, consecutive calendar years (the "Net Output Requirement"). Where a Force Majeure Event adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of energy not generated due to the Force Majeure Event; provided, however, Seller agrees that it must demonstrate to NCEMPA and NCEMPA must determine, in NCEMPA's sole commercially reasonable discretion, that the Facility's generation output was actually reduced due to the Force Majeure Event.

NCEMPA's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the amount owed by NCEMPA to Seller for the immediately following full calendar year, calculated by multiplying the quantity of the energy delivered by Seller to NCEMPA in each Monthly billing period during such calendar year by fifty percent (50%) of the rate for energy set forth in the Avoided Cost Rate Schedule attached hereto.

If Seller fails to satisfy the Net Output Requirement for any period of two consecutive years, for the purpose of determining compliance with the Net Output Requirement in the following consecutive two-year period, the amount of energy generated in the first year of such two-year period will be deemed to be the higher of (i) seventy percent (70%) of the Contract Energy for such year, or (ii) the actual amount of energy generated by the Facility in such first year.

(c) Increase In Contract Capacity

Seller may apply to NCEMPA to increase the Contract Capacity during the Contract Period and, upon approval by NCEMPA and approval by the City of a revised Interconnection Agreement, future Monthly (as defined in Section 7(c), below) delivered capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of the City's

facilities, such additional costs to Seller shall be determined in accordance with these Terms and Conditions and the Interconnection Agreement.

6) QUALITY OF ENERGY RECEIVED

- a) Seller has full responsibility for the routine maintenance of its generating and protective equipment to ensure that reliable, utility grade electric energy is being delivered to NCEMPA as defined by the Interconnection Agreement.
- b) Seller's facility shall be operated in such a manner as to generate reactive power as to maintain voltage levels and reactive area support as specified by the City more fully in the Interconnection Agreement.
- c) Seller may operate direct current generators in parallel with the City's distribution or transmission system through a synchronous inverter. The inverter installation shall be designed such that a utility system interruption will result in the removal of the inverter infeed into the City's distribution or transmission system. Harmonics generated by a DC generator-inverter combination must not adversely affect the City's supply of electric service to, or the use of electric service by the City's other customers, and any correction thereof is the full responsibility of Seller as defined by the Interconnection Agreement.

7) BILLING AND METERING

- a) NCEMPA, the City, Duke Energy Progress, and/or Dominion North Carolina Power shall install and maintain utility grade billing meter(s) for the measurement of electrical energy provided by the Facility to the Point of Interconnection. All billing meters shall be sealed and only NCEMPA or City representatives shall break the seal for inspection and testing or adjusted in accordance with this section.
- b) If NCEMPA or the City is unable to read its billing meter for any reason, Seller's production may be estimated by NCEMPA on the basis of Seller's production during the most recent preceding Billing Period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings. However, a settlement adjustment may be made based on the next actual billing meter reading to account for all actual electrical energy produced and delivered by the Facility as measured by the billing meter. For purposes of these Terms and Conditions, each calendar month during the Contract Period shall be a Billing Period.
- c) The term "Month" or "Monthly", as used in NCEMPA's Schedules, refers to the interval transpiring between the previous meter reading date and the current reading date and bills shall be rendered accordingly, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading

schedule, is more or less than 27-33 days, the bill will be prorated based on a 30-day billing month.

d) NCEMPA and/or the City shall perform or cause to be performed the maintenance, testing and calibration of all billing meters in accordance with prudent utility practices no less than once every calendar year. In the event that Seller reasonably suspects an error in the metering equipment, Seller may request a more frequent test, which test shall be at Seller's cost if the metering equipment is found to be within allowable limits defined in Section 7(e) below and at NCEMPA's cost if the metering equipment is found not to be within such allowable limits.

e) In the event a meter fails to register accurately within allowable limits defined below in this paragraph, NCEMPA and/or the City will adjust the measured energy for the period of time the meter was shown to be in error, and shall pay to Seller, or Seller shall refund to NCEMPA, the difference between the amount billed and the estimated amount which would have been billed had the meter registered accurately within allowable limits. No part of any minimum service charge shall be refunded. If the metering equipment is found to be inaccurate by two percent (2.0%) or less, then any previous recordings of the metering equipment shall be deemed within allowable limits, but NCEMPA and/or the City shall use reasonable best efforts to adjust such meter as soon as practical. If the metering equipment is found to be inaccurate by more than two percent (2.0%), the meter readings for the period of inaccuracy and associated billings shall be adjusted as far as can be reasonably ascertained by NCEMPA from the best available data, subject to review and approval by Seller, which will not be unreasonably withheld. If the period of inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half (1/2) of the time elapsed since the preceding test.

8) POINT OF INTERCONNECTION

The Point of Interconnection is specified in the attached Interconnection Agreement. Seller shall do all things necessary to bring its conductors to such Point of Interconnection for connection to the City's conductors, and shall maintain said conductors and other Seller-owned facilities in accordance with the Interconnection Agreement at all times.

9) CONTINUANCE OF PURCHASES AND LIABILITY THEREFOR

NCEMPA does not guarantee continuous purchases but shall use reasonable diligence at all times to provide for uninterrupted acceptance of electricity and, having used reasonable diligence, shall not be liable to Seller for damages, for interruptions or suspensions of the same.

NCEMPA reserves the right to suspend purchases without liability on its part at such times and for such periods and in such manner as it or the City may deem advisable (a) for the purpose of making necessary adjustments to, changes in, or repairs on the City's lines, substations, and facilities, (b) in cases where, in its or the City's opinion, the

continuance of purchases from Seller's facility would endanger persons or property, and (c) for other reasons as stated in Section 1(g).

In the event of an adverse condition or disturbance on the system of the City, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas in order to limit the extent or damage of the adverse condition or disturbance, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, NCEMPA or the City may, without incurring liability, interrupt service to customers or areas, interrupt purchases from Seller, and take such other action as appears reasonably necessary.

Seller shall be responsible for ensuring the safe operation of its equipment at all times, and Seller, NCEMPA and/or the City will install and maintain, to NCEMPA's and the City's satisfaction, the necessary automatic equipment to prevent the backfeed of power into, protect from damage to, and maintain the reliability of, the City's distribution or transmission system, and Seller shall be subject to immediate disconnection of its equipment from the City's system if NCEMPA or the City determines that Seller's equipment is unsafe or adversely affects the City's distribution or transmission system or service to the City's other customers.

Seller assumes responsibility for and shall indemnify, defend, and save NCEMPA harmless against all liability, claims, judgments, losses, costs, and expenses for injury, loss, or damage to persons or property including personal injury or property damage to Seller or Seller's employees on account of defective construction, wiring, or equipment, or improper or careless operation of the Facility, or improper or careless use of electricity, on Seller's side of the Point of Interconnection.

10) GOVERNMENTAL RESTRICTIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or over this Agreement. This Agreement shall not become effective until all required governmental authorizations are obtained. Certification of receipt of all permits and authorizations shall be furnished by Seller to NCEMPA upon NCEMPA's request. This Agreement shall not become effective unless it and all provisions thereof are authorized and permitted by such governmental agencies without change or conditions.

This Agreement shall at all times be subject to changes made by such governmental agencies, and the parties shall be subject to conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract. Both parties agree to exert their best efforts to comply with all of the applicable rules and regulations of all governmental agencies having control over either party or this Agreement. The parties shall take all reasonable action necessary to secure any required governmental approval of this Agreement in its entirety and without change.

The Seller shall comply with all required regulatory requirements (including, but not limited to, the North American Electric Reliability Corporation (NERC) standards and requirements and any applicable standards or requirements adopted by a Regional Entity) applicable to the Seller's ownership, maintenance and operation of its facilities. NCEMPA shall not be responsible for Seller's compliance with any regulatory requirements, including, but not limited to, NERC and Regional Entity compliance obligations of Seller.

The delivery date, quantity, and type of electricity to be accepted for purchase by NCEMPA from Seller are subject to changes, restrictions, curtailments, or complete suspensions by NCEMPA, as may be deemed by it to be necessary or advisable (a) on account of any lawful order or regulation of any municipal, State, or Federal government or agency thereof, or order of any court of competent jurisdiction, or (b) on account of any emergency due to war, or catastrophe, all without liability on the part of the NCEMPA therefor.

ATTACHMENT 3
ANNUAL SECURITY REQUIREMENT

Contract Year	Security Amount Start Date	Security Amount End Date	Amount
Year 1	TBD	TBD	\$TBD
Year 2	TBD	TBD	\$TBD
Year 3	TBD	TBD	\$TBD
Year 4	TBD	TBD	\$TBD
Year 5	TBD	TBD	\$TBD
Year 6	TBD	TBD	\$TBD
Year 7	TBD	TBD	\$TBD
Year 8	TBD	TBD	\$TBD
Year 9	TBD	TBD	\$TBD
Year 10	TBD	TBD	\$0.00

ATTACHMENT 4
INTERCONNECTION AGREEMENT

ATTACHMENT 5
FERC PURPA QF FORM 556

ATTACHMENT 6
NCUC CPCN or ROPC