



GreenSky Development Group

APPENDIX B: SAMPLE PPA

See Attached PDF titled "Offsite Solar PPA Template."

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address		Name and Address	Seller Name 111 Street Name City, State 00000-0000 Attention: Seller Contact
Phone	() -	Phone	() -
Fax	None	Fax	() -
E-mail	@	E-mail	@
		Premises Ownership	Seller <input type="checkbox"/> owns <input type="checkbox"/> leases the Premises. List Premises Owner, if different from Seller: _____
		Additional Seller Information	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy and related Environmental Attributes (as defined in **Exhibit 3**) from the solar panel system described in **Exhibit 2** (the “**System**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Basic Terms and Conditions
- Exhibit 2** System Description
- Exhibit 3** General Terms and Conditions

Purchaser: Purchaser Name

Seller: Seller Name

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Basic Terms and Conditions

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date and ending at 11:59 p.m. eastern time on the twentieth (20th) anniversary of the Commercial Operation Date, provided, however, if the Commercial Operation Date is not the first day of a calendar month, then the Initial Term shall end at 11:59 p.m. eastern time on the last day of the calendar month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each pursuant to Section 3 of Exhibit 3.
3. **All Environment Attributes:** Accrue to Purchaser.
4. **All Environmental Incentives:** Accrue to Seller.
5. **Contract Price:**

Contract Year	\$/kWh
1	\$0.0000
2	\$0.0000
3	\$0.0000
4	\$0.0000
5	\$0.0000
6	\$0.0000
7	\$0.0000
8	\$0.0000
9	\$0.0000
10	\$0.0000
11	\$0.0000
12	\$0.0000
13	\$0.0000
14	\$0.0000
15	\$0.0000
16	\$0.0000
17	\$0.0000
18	\$0.0000
19	\$0.0000
20	\$0.0000

6. **Commercial Operation Date:** _____, 201_
7. **Purchaser Options to Purchase System.** None or as set forth in Section 14.

Exhibit 2
System Description

1. **System Location:** [Site Street Address, City, State Zip]
2. **System Size (DC kW):** {...}
3. **Expected First Year Energy Production (kWh):** {...}
4. **Expected Structure:** [X] Ground Mount Roof Mount Parking Structure Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
[...]	{...}

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
[...]	{...}

7. **Facility and System Layout:** See Exhibit 2, Attachment A
8. **Interconnecting Utility (or PJM if direct transmission interconnection):** _____

Exhibit 2
Attachment A:
Facility and System Layout

Conceptual Drawing of the System	See below
Delivery Point	[Project Node, PJM West Hub or APS Zone]

Exhibit 3
Solar Power Purchase Agreement
General Terms and Conditions

August 8, 2013 Solar Energy Finance Association Version 1.0

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement and commencing on the Commercial Operation Date, Purchaser shall purchase and receive from Seller, and Seller shall deliver and sell to Purchaser, ___% of the electric energy generated by the System (“**Purchaser’s Energy**”) and related Environmental Attributes during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”) using the PJM InSchedule application or any successor application thereto. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser after the Delivery Point.
3. **Term and Termination.**
 - a. **Initial Term.** This Agreement is effective as of the Effective Date. The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in by the Term in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation and the interconnection or similar agreement with the PJM ISO and interconnected distribution company (if any) (the “**Utility**”), as set forth on **Exhibit 2**
 - b. **Failure to Meet Commercial Operation Date.** Should the Commercial Operation Date exceed the date designated in **Exhibit 1 Section 6**, Seller will pay Purchaser for any losses related to Purchaser’s purchase of replacement electricity and Environmental Attributes calculated as the amount of electricity in MWh that would have been generated by the System for any hour following midnight of the Commercial Operation Date as designated in Exhibit 1 multiplied by the difference between (1) the Contract Price and (2) the sum of (i) the hourly, real-time Locational Marginal Price (in \$/MWh) posted by PJM for the respective hour and (ii) the cost of replacement Environmental Attributes (in \$/MWh).
 - c. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, Purchaser may give Seller written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Alternatively, Purchaser may give Seller written notice of its desire to extend this Agreement under modified terms including but not limited to the modification of the Contract Price, Delivery Point, and length of the additional period (a “**Modified Additional Term**”). Both the Additional Term and Modified Additional Term are also referred herein as an “**Extension Term**.” Notice for any Extension Term shall be given, if at all, not more than one (1) year and not less than sixty (60) days before the last day of the Initial Term or the then current Extension Term, as applicable. If the notice is for a Modified Additional Term, the Seller shall respond positively or negatively to the proposed modifications in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed an acceptance of the offer for a Modified Additional Term. If the Seller rejects the Modified Additional Term offer, both Parties shall work in good faith to reach agreement on terms for a Modified Additional Term which shall begin immediately upon conclusion of the Initial Term or then current Additional Term. If such agreement is not reached thirty (30) days prior to the expiration of the Initial Term or then current Extension Term, this Agreement shall terminate at the end of the Initial Term or then current Extension Term. All Modified Additional Terms shall be documented in an amended Agreement executed by both parties.
4. **Billing and Payment.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for Purchaser's Energy delivered to the Delivery Point and related Environmental Attributes at the \$/MWh rate shown in **Exhibit 1** (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/MWh rate multiplied by the number of MWh of energy generated for Purchaser during the applicable month, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Taxes.** For purposes of this **Section 4(c)**, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility. Seller shall be responsible for all Taxes related to the solar system and the sale of generation under this Agreement.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of one percent (1.0%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law). Disputed amounts shall be withheld from payment by Purchaser and Purchaser shall send Seller its justification for such disputed amount. Purchaser and Seller will work in good faith to resolve disputed amounts within thirty (30) days. Disputed amounts eventually deemed due and payable shall be paid by Purchaser with interest accrued at the annual prime rate as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Purchaser is the owner of all System generated Environmental Attributes created by the generation of Purchaser's Energy and Seller is entitled to the benefit of all Environmental Incentives, Tax Credits, capacity payments and other ancillary market benefits from the PJM ISO. For the avoidance of doubt, Purchaser's purchase of electricity under this Agreement at the Contract Price includes Environmental Attributes. Purchaser shall cooperate with Seller in transferring to Purchaser all Environmental Attributes including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Seller, if engaged in commerce and/or trade, shall submit to Purchaser for approval any press releases regarding Seller's use or ownership of solar or renewable energy and shall not submit for publication any such releases without the written approval of Purchaser. Approval shall not be unreasonably withheld, and Purchaser's review and approval shall be made in a timely manner to permit Seller's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this **Section 5**. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority,

body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the Pennsylvania Public Utility Commission).

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Seller’s Rights and Obligations.

a. Installation. Seller will cause the System to be installed substantially in accordance with the terms of this Agreement. Seller shall install the System in good workmanlike manner and in compliance with building codes and other applicable laws.

b. Permits and Approvals. Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any governmental approval (as defined in this Agreement), zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the electrical system and/or the Utility’s electric distribution system.

At Seller’s sole cost and expense, Purchaser shall cooperate with Seller’s reasonable requests to assist Seller in obtaining agreements, permits and approvals.

c. Standard System Repair and Maintenance. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense using Prudent Industry Practices.

“**Prudent Industry Practices**” means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the location, size and technology of the System, and in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers, including the maintenance and good standing of all vendor and equipment warranties, and applicable Governmental Approvals and Law. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

d. Breakdown Notice. Seller shall notify Purchaser within twenty-four (24) hours following Seller’s discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

e. Suspension. Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining, protecting and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use Prudent Industry Practices and commercially reasonable efforts to notify Purchaser with as much advance notice as possible and minimize any interruption in service to the Purchaser. If Seller does not restore, within 180 days, the System to its Energy Output capability for the average day for the 365 days preceding the interruption of supply, Purchaser may terminate this Agreement with no further liability.

No responsibility or liability of any kind shall attach to or be incurred by Seller for, or on account of, any loss, cost, expense or damage caused by or resulting from, either directly or indirectly, an interruption of service under this Agreement, unless the interruption of service was caused by the negligence of the Seller.

f. Scheduling. As between Purchaser and Seller, Seller shall be the single point of contact for PJM for the operation of the System in PJM (including serving as the PJM “all-call” contact for dispatch). Using Prudent Industry Practices, Seller shall submit schedules to PJM and perform other activities required of an entity that, with regard to scheduling, bidding, and dispatch, represents a generation resource, including accounting and allocation of Environmental

Attributes attributable to Purchaser. Seller shall have the right to determine its bidding strategy for the System in its sole discretion. Seller will communicate its initial bidding strategy to Purchaser prior to the Commercial Operation Date, and will relay any change to the bidding strategy to Purchaser at least forty-eight (48) hours prior to the PJM operating day, provided such change to the bidding strategy does not or will not reasonably result in a reduction in Purchaser's Energy or Environmental Attribute allocation. If such change to the bidding strategy is reasonably expected to reduce Purchaser's Energy or Environmental Attribute allocation, Seller shall seek Purchaser's consent to such change, and absent such consent, shall not change the bidding strategy. Any changes to the bidding strategy that reduce Purchaser's Energy or Environmental Attribute allocation shall be considered a Seller's default under this Agreement pursuant to Section 11. Seller shall perform, and be responsible for, complying with all scheduling and other communications and actions with respect to the System required or permitted by PJM over the Term of the Agreement with respect to the Purchaser's Energy and Environmental Attributes.

Seller shall not provide ancillary services from the System to Third Parties including PJM to the extent doing so would adversely affect Seller's ability to provide Purchaser's Energy to Purchaser (or Purchaser's Agent as described in Section 7.b).

Seller shall track all Environmental Attributes and properly allocate, through PJM GATS or successor application, to Purchaser the Environmental Attributes created by the generation of Purchaser's Energy.

g. **Site Benefits and Attributes.** [To be negotiated]

7. **Purchaser's Rights and Obligations.**

a. **Agency Rights.** Purchaser hereby irrevocably designates, constitutes and appoints Seller as its true and lawful agent for the specific and limited purpose of performing or securing the performance of the functions described in Section 6.c with respect to and in accordance with the scheduling and bidding requirements under this Agreement. Seller and Purchaser will execute a "Declaration of Authority" with PJM prior to the Commercial Operation Date. Under the Declaration of Authority, Seller will be named as Market Participant to schedule Purchaser's Energy and record Purchaser's Environmental Attributes, and as Market Participant will cause PJM, in accordance with the PJM Open Access Tariff, to direct all charges and revenues associated with Purchaser's Energy to Purchaser's designated PJM subaccount. To the extent that Seller receives any payment from PJM with respect to the Purchaser's Energy, Purchaser (or Purchaser's Designee) may set off the amount of such payment against payments owed by Purchaser to Seller under this Agreement.

b. **Purchaser's Agent.** Purchaser shall have the right to designate an agent (the "Purchaser's Agent") for the purpose of managing Purchaser's subaccount and interacting as needed with Seller regarding PJM activity including the payment of PJM related costs due from Purchaser to Seller (if any).

c. **Installation Verification.** Purchaser shall have the right to review all design and construction plans for the System.

d. **Research Provisions.** [To be negotiated]

8. **Regulatory Event.**

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "**Regulatory Event**") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

9. **Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System and return the Premises to its original condition. [To be further negotiated]

10. **Measurement.**

a. **Metering Equipment.** Seller shall provide, install, own, operate and maintain Metering Device(s) at the Property or the Delivery Point in a location mutually acceptable to Seller and Purchaser. Each Metering Device shall be a utility-grade meter specified by Purchaser's local electric utility and shall comply with the American National Standard for

Electricity Meters ANSI C12.20. Seller's specification of Metering Device(s) (including any replacements) shall be subject to Purchaser's review and approvals.

b. Measurements. Readings of the Metering Device shall be conclusive as to the amount of Energy Output; provided that if the Metering Device is out of service, is discovered to be inaccurate pursuant to subsection (c), or registers inaccurately, measurement of Energy Output shall be determined in accordance with the following procedure: (a) by estimating by reference to quantities measured during periods of similar conditions when the Metering Device was registering accurately; (b) if the metering device is discovered to be inaccurate pursuant to subsection (c), or registers inaccurately, and no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under subsection (c) was equal to: (i) the actual period during which inaccurate measurements were made if the period of inaccuracy can be determined; or (ii) one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments if the period of inaccuracy cannot be determined, provided, however, that, in the case of clause (ii), the period covered by the correction shall not exceed six months; and (c) if the Metering Device is taken out of service by Seller for maintenance, repair or another purpose, Seller shall establish the Energy Output during the time the Metering Device is out of service by other objective data such as the inverter or other reliable measurement of Energy Output, provided Seller shall work diligently to return the Metering Device to service as soon as possible. Purchaser shall have a right to dispute such data in accordance with subsection (c).

c. Testing and Corrections.

i. Parties' Right to Witness Tests. Each Party and its consultants and representatives shall have the right to witness any Metering Device test to verify the accuracy of the measurements and recordings of the Metering Device. Seller shall provide at least ten (10) calendar days' prior written notice to Purchaser of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test conducted by Seller its consultants and representatives, and shall, at the request of Purchaser, provide Purchaser with copies of such written report not later than thirty (30) calendar days after completion of such test.

ii. Purchaser's Right to Conduct Tests. Purchaser shall have the right to have an independent third-party conduct tests of the Metering Device upon reasonable notice to Seller. Purchaser shall bear the cost of such testing of the Metering Device and the preparation of the Metering Device test reports, except in the case of testing conducted to resolve a dispute as to accuracy pursuant to the following subsection, in which case the responsibility for such costs shall be determined as stated therein.

iii. Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

A. If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.

B. Seller shall, within fifteen (15) calendar days after receiving such notice from Purchaser or issuing such notice to Purchaser, advise Purchaser in writing as to Seller's position concerning the accuracy of such Metering Device and Seller's reasons for taking such position.

C. If the Parties are unable to resolve the dispute through reasonable, good faith negotiations within thirty (30) days after the initial notice of dispute was given by either Party, then either Party may request a test of the Metering Device by an independent third party.

D. If the Metering Device is found to be accurate per ANSI C12.20 (Class .5 - having $\pm 0.5\%$ accuracy, and Class .2 - having $\pm 0.2\%$ accuracy), any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device shall bear the cost of inspection and testing of the Metering Device.

E. If the Metering Device is found to be inaccurate per ANSI C12.20 (Class .5 - having $\pm 0.5\%$ accuracy, and Class .2 - having $\pm 0.2\%$ accuracy) or if such Metering Device is for any reason out of service or fails to register, then (a) Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered

during the periods affected by such inaccuracy, service outage or failure to register as provided in subsection (b). If, as a result of such adjustment, the quantity of Purchaser's Energy for any period is decreased (such quantity, the "**Energy Deficiency Quantity**"), Seller shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of the Metering Device. If, as a result of such adjustment, the quantity of Purchaser's Energy for any period is increased (such quantity, the "**Energy Surplus Quantity**"), Purchaser shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of the Metering Device. Any out-of-service period required to make corrections to the meters accuracy or failure to operate correctly shall not exceed two (2) weeks.

11. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**", the other Party shall be deemed to be the "**Non-Defaulting Party**", and each event of default shall be a "**Default Event**":
- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
 - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
 - iv. Seller loses its rights to occupy and enjoy the Premises;
 - v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
 - vi. Purchaser fails to perform in a way that prevents the delivery of electric energy from the System.
- b. **Remedies.**
- i. **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
 - ii. **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
- A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to for any given Contract Year, the amount set forth on Exhibit 4, Attachment A attached hereto. The Termination Payment shall not be less than zero.
 - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of 7%) of the excess, if any, of (i) the reasonably expected cost of replacement electric energy at the Delivery Point (in \$/MWh) and cost of replacement Environmental Attributes that are reasonably of an equivalent amount and type as those that would have generated by the System (in \$/MWh) minus the Contract Price multiplied by (ii) estimated Purchaser’s Energy, using the performance guarantee, for the remainder of the Initial Term or the then current Extension Term, as applicable; (2) all costs reasonably incurred by Purchaser in purchasing replacement electric supply; and (3) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
 - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 11(b), then following such termination, the Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

12. Representations, Warranties and Covenants.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors’ rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
 - iii. Neither the execution and delivery of this Agreement by either Party nor the performance by either Party of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which either Party is a party or by which Seller or the Premises is bound.
 - iv. All information provided by either Party, as it pertains to the Premises and the System, Seller’s planned use of the Premises and System, is accurate in all material respects.
- b. Seller’s Representations, Warranties and Covenants. The Seller represent and warrant the following as of the Effective Date and covenants that throughout the Term:
- i. Premises. Seller has title to or a leasehold or other property interest in the Premises.
 - ii. Payment of Contractors and Suppliers; No Liens. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall not permit any liens to be filed against the Premises or the System in connection with such charges which could adversely affect Seller’s rights or title to the Premises or the System or its ability to perform its obligations under this Agreement.

iii. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.

c. **Purchaser's Representations, Warranties and Covenants**. The Purchaser represents and warrants the following as of the Effective Date and covenants that throughout the Term:

i. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

13. **System Damage and Insurance**.

a. **System Damage**.

i. Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition.

b. **Insurance Coverage**. At all times during the Term, Seller shall maintain the following insurance:

i. The Seller, and any Subcontractor thereof, shall, at its own expense, carry and maintain the following insurance during the term of this Agreement, in amounts not less than that specified for each type. A self-insured program may be substituted for an insured program only after such self-insured program is reviewed and approved by the University's Risk Management Office.

ii. Such insurance or self-insurance shall be primary and non-contributory to the University's insurance and self-insurance coverage.

iii. The limits required for the Employers' Liability, Automobile Liability and Commercial General Liability insurance coverages may be satisfied through primary insurance or a combination of primary and umbrella/excess liability insurance as long as the umbrella/excess liability insurance follows the form of the primary coverage.

iv. Failure to procure, carry, and maintain the following insurance or self-insurance shall not relieve the Seller, and any Subcontractor thereof, of any obligation or liability assumed under the Agreement, nor of any obligation or liability imposed by law.

v. In no event shall the liability of the Seller be limited to the extent of any insurance or self-insurance, the minimum limits required herein, or the contract value.

vi. Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Seller.

vii. The Seller or its insurers must provide thirty (30) days advanced written notice to the University of any cancellation or material reduction in the required insurance or self-insurance programs below.

viii. All insurance policies except the Workers' Compensation must contain a waiver of subrogation against the University.

ix. All insurance coverages (except those that are self-insured and approved by the University) must be written with an insurer licensed to conduct business in Pennsylvania and rated not less than A- by A. M. Best.

x. In the event the Seller fails to maintain and keep in force the insurance coverages required, the University shall have the right to immediately terminate the Agreement.

xi. The insurance requirements shall be subject to University review and approval, on an annual basis, during the term of this Agreement.

xii. Workers' Compensation for statutory obligations imposed by workers' compensation and occupational disease laws. Employers' Liability insurance shall be provided with limits of not less than \$500,000 for each subcategory of coverage.

xiii. Automobile Liability insurance (Bodily Injury Liability and Property Damage Liability) for all owned, leased, hired, non-owned vehicles, with limits not less than \$500,000 Combined Single Limit.

- xiv. Commercial General Liability insurance including coverage for bodily injury, property damage, and personal injury for premises and operations, products and completed operations, and contractual liability, arising from all operations, written on an occurrence basis with limits not less than \$1,000,000, and which must apply to ongoing operations. Medical Expense coverage must be written with a limit of not less than \$10,000 per person. "The Pennsylvania State University" must be named as an additional insured.
 - xv. Umbrella/Excess Liability insurance shall be excess of the underlying Employer's Liability, Automobile Liability, and Commercial General Liability insurance with limits not less than \$5,000,000.
 - xvi. Property insurance to cover the repair or replacement of property of the Seller or of the University (which are in the possession of the Seller, including supplies) covered by this Agreement. The University shall be named as an additional insured and loss payee with respect to loss or damage to any of its property furnished to the Seller. The Seller assumes the risk of loss or destruction of or damage to any of its property and its employees' property, whether owned, hired, rented, borrowed, or otherwise.
- c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the Seller agrees to give the Purchaser (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
 - d. **Certificates.** Any party required to provide and secure insurance under this Agreement shall deliver the other Party certificates of insurance evidencing the above required coverage and listing the Purchaser as a named additional insured. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
 - e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, the Seller shall be responsible for the payment of its own deductibles.

14. **Option to Purchase.**

- a. **Grant of Purchase Option.** For and in consideration of the payments made by Purchaser under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, provided Purchaser has not committed an Event of Default hereunder, Seller hereby grants Purchaser the right and option to purchase for Fair Market Value all of Seller's right, title and interest in and to the System on the terms set forth in this Agreement (the "**Purchase Option**"). The Purchase Option may be exercised by Purchaser in accordance with this Article at the end of the seventh (7th) year of the Initial Term, the end of the fifteenth (15th) year of the Initial Term or at the expiration of the Term or any Extension Term, or at any time upon Purchaser's termination of this Agreement for default pursuant to Section 11. The purchase price for the System (the "**Purchase Price**") shall be: (i) mutually agreed upon by the Parties upon Purchaser's exercise of the Purchase Option; or (ii) Fair Market Value as determined by an Independent Appraiser in accordance with the procedure set forth in this Article.
- b. **Purchaser Request for Appraisal of System Value.** Not later than (a) sixty (60) days prior to the expiration of the seventh (7th) year of the Term, the fifteenth (15th) year of the Term or the end of the Term (or any Extension Term as the case may be), or (b) five (5) days after an Event of Default by Seller, Purchaser shall have the right to provide a notice to Seller requiring a determination of the Purchase Price in accordance with subsection (d). With the exception of an Event of Default by Seller, the Purchaser shall reimburse Seller for actual costs involved with periodic requests for an Appraisals of the System.
- c. **Selection of Independent Appraiser.** Within twenty (20) Business Days of Seller's receipt of a notice provided under subsection (b), Seller and Purchaser shall mutually agree upon an Independent Appraiser. If Seller and Purchaser do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then within five (5) Business Days after the end of such twenty (20) Business Day period, Seller and Purchaser shall notify each other in writing of their respective designation of a proposed Independent Appraiser. The two (2) proposed Independent Appraisers shall, within two (2) Business Days after the appointment of the second (2nd) Independent Appraiser, select a third (3rd) Independent Appraiser and such third (3rd) Independent Appraiser shall perform the duties of the Independent Appraiser as set forth herein. Such selection shall be final and binding on Seller and Purchaser. If no agreement is made as to the selection of an Independent Appraiser, either Party may apply for

the judicial appointment of such Independent Appraiser. If either Party fails to select an Independent Appraiser within the time periods prescribed hereby, then the determination of the Purchase Price by the Independent Appraiser selected by the other Party shall be final, binding and conclusive on the Parties.

d. Determination of Purchase Price.

- i. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Purchase Price (the “**Preliminary Determination**”).
- ii. Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Seller and Purchaser, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Purchaser shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser’s final determination (the “**Final Determination**”) to Seller and Purchaser, which shall specifically address the objections received by the Independent Appraiser, if any, and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

e. Calculation of Purchase Price. The Purchase Price payable by Purchaser for the System shall be equal to the amount determined as set forth in Section 14(d) above.

f. Costs and Expenses of Independent Appraiser. Seller and Purchaser shall each be responsible for payment of one-half of the costs and expenses of the Independent Appraiser.

g. Exercise of Purchase Option.

- i. Purchaser shall have thirty (30) Business Days from (i) the date of the Final Determination, or (ii) if Purchaser and Seller have mutually agreed upon a Purchase Price, the date that the Parties agree upon a Purchase Price (such period, the “**Exercise Period**”), to exercise the Purchase Option, time being of the essence. Purchaser must exercise its Purchase Option during the Exercise Period by providing written notice thereof (the “**Exercise Notice**”) to Seller. Once Purchaser delivers its Exercise Notice to Seller, such exercise shall be irrevocable.
- ii. Seller shall, upon at least three (3) Business Days’ prior written notice from Purchaser to Seller at any time during the Exercise Period, make the System, including records and contracts relating to the System’s equipment, operations, maintenance, supply and warranty repairs (to the extent in Seller’s possession), available to Purchaser for its inspection at Seller’s office during normal business hours; provided, however, Purchaser shall not disclose any Confidential Information to any third party other than its officers, employees, lenders, counsel, accountants or advisors (collectively, “**Representatives**”), who have a need to know such information and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein or as otherwise required by law.

h. Terms of System Purchase. On the Transfer Date: (a) Seller shall surrender and transfer to Purchaser all of Seller’s right, title and interest in and to all System and shall retain all liabilities arising from or related to the System Assets prior to the Transfer Date; (b) Purchaser shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System from and after the Transfer Date; and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, including an assignment of any Solar Facilities Lease in a form reasonably acceptable to both Parties; provided, however, the System Assets shall be conveyed to Purchaser in their then “AS-IS” condition, without any representations or warranties from Seller, expressed or implied, including, without limitation, any warranties of merchantability, fitness or any other condition thereof for any particular purpose, and (ii) deliver such other conveyance and transaction documents and any other ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System to Purchaser.

i. Transfer Date. The closing of any sale of the System pursuant to this Article will occur no later than ten (10) days following the expiration of the Exercise Period (the “**Transfer Date**”).

j. Assignment of Warranties or Supply Contracts. In the event Purchaser exercises the Purchase Option pursuant to this Article, Seller shall assign to Purchaser any then-existing warranties, and, at Purchaser’s request, any equipment,

maintenance, operations or supply contracts pertaining to the System or its operation, but only to the extent Seller has the right to assign such warranties and/or contracts pursuant to the terms thereof.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, trustees, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 12 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, subcontractors, affiliates, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 15(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 15(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(i)). Seller shall promptly notify Purchaser if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. “**Hazardous Substance**” means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**

Except with respect to indemnification for third party claims pursuant to this Section 15 and damages that result from the willful misconduct or gross negligence of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (2) in the event that a breach of this Agreement by Seller causes Purchaser to lose the Environmental Attributes produced by the System and the benefit of such Environmental Attributes, the replacement cost of such Environmental attributes shall be direct and not indirect or consequential damages.

16. **Force Majeure.**

- a. “**Force Majeure**” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); and unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence).
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser’s ability to make payment.
- d. If a Force Majeure event continues for a period of one-hundred eighty (180) days or more within a twelve (12) month period, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

17. **Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller, provided, that in each case, Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any such assignment pursuant to subsection (ii) or (iv) above, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller’s right and/or obligations under this Agreement, shall not result in any change to Purchaser’s rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**Financing Parties**” means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that Purchaser agrees such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 17(a)(i) or (iii), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider (i) has adequate experience, fitness and expertise (in Purchaser’s reasonable judgment) in designing, constructing, installing, operating and maintaining solar electric generating systems similar to the System, or has employed or entered into a contract with reputable third parties with comparable experience, fitness and expertise in connection with the operation and maintenance of the System; and (ii) has (in Purchaser’s reasonable judgment) the financial capability (including insurance) to maintain the System in the manner required by this AGREEMENT.

18. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser’s business (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, “**Representatives**”), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 18(a), except as set forth in Section 18(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 18(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 18(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18(a), but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

19. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

20. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the Commonwealth of Pennsylvania shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Venue.** Venue for any litigation arising from this Agreement shall only be proper in the Centre County Court of Common Pleas or the United States District Court for the Middle District of Pennsylvania.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 12 (Representations and Warranties), Section 13(b) (Insurance Coverage), Section 15 (Indemnification and Limits of Liability), Section 18 (Confidentiality and Publicity), Section 20(a) (Choice of Law), Section 20 (Venue), Section 20(c) (Notices), Section 20(g) (Comparative Negligence), Section 20(h) (Non-Dedication of Facilities), Section 20(j) (Service Contract), Section 2020(k) (No Partnership) Section 20(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 20(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 9 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified

and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership, Joint Venture or Fiduciary Relationship.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 17, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Bonding.**
 - i. **Performance bond liability.** Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
 - ii. **Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.
 - iii. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.

Exhibit 3
Attachment A
Termination Payment

Contract Year	Termination Payment Amount
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
After Year 20	Fair Market Value

End of Exhibit

Exhibit 3
Attachment B
Termination Payment

Contract Year	Purchase Amount
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
After Year 20	Fair Market Value

End of Exhibit