

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation:** The Solar Power Purchase Agreement consists of the executed cover page and Exhibits 1-4 and their attachments (“**this Agreement**”). 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 capitalized term “**Premises**” shall mean the real property or land owned by the “**Host Municipality**” as defined in the cover page of this Agreement, upon which a physical structure or building may or may not exist; and for purposes described herein, where the “**System**” as defined in the cover page of this Agreement shall be installed and located. In this Agreement the Host Municipality and the “**Utility**” as identified in Exhibit 2 of this Agreement is the same legal entity. Other capitalized terms shall have the meanings given to them as referenced in the body of this Exhibit 4 or elsewhere in this Agreement. 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.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Term (as defined in Section 3(a)) and all other attributes associated with the output of the System or with the renewable energy and non-carbon generation aspects of the System, except the Tax Credits as defined herein. For clarification, even though the Contract Price is based only on the energy generated by the System, Purchaser shall receive, own, control and be entitled to the benefits of any and all attributes associated with the output of the System or with the renewable energy and/or non-carbon generation aspects of the System, including but not limited to capacity, energy, ancillary services and any renewable energy or non-carbon credits that may be available by virtue of the type of generation involved; provided however, Seller shall continue to own the System, and Seller shall be entitled to its stream of payments hereunder and all Tax Credits associated with the System and/or its output. Electric energy and other attributes generated by the System will be delivered to Purchaser at the delivery point identified on Exhibit 2 (the “**Delivery Point**”). Purchaser shall take title to the electric energy and other attributes generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Any delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only (“**Test Energy**”) and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such Test Energy. Purchaser shall not be charged for such Test Energy at the Contract Price, but rather shall pay an amount equal to Purchaser’s avoided cost of energy for any Test Energy produced by the System and delivered to the Purchaser. The avoided cost of energy shall be equal to the average Locational Marginal Price at the Illinois Hub in the Day-Ahead energy market of Midcontinent Independent System Operator, Inc. (“**MISO**”) for the month; provided however, the avoided cost shall not be less than \$20/MWh.

Notwithstanding anything to the contrary herein, Purchaser’s obligations under this Agreement are subject to, and shall not become effective, until the Host Municipality executes a Generation Siting and Operating Agreement authorizing use of the Premises for the location of the System and agreeing to grant Purchaser an easement sufficient to grant Seller the License provided for herein. Purchaser agrees to confirm satisfaction and release of this condition by providing Seller with a copy of such Generation Siting and Operating Agreement promptly upon execution of same.

3. **Term and Termination.**
 - a. **Term.** The term for the delivery of electric energy (other than Test Energy) under this Agreement (the “**Term**”) shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated by Purchaser exercising its option to acquire ownership of the System as stated herein, or as otherwise provided for in this Agreement. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor. This Agreement is effective as of the Effective Date and Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

 - b. The “**Commercial Operation Date**” or (“**COD**”) shall be determined as mutually agreed by the parties based on the following: Seller shall give Purchaser written notice when the System is mechanically complete and capable of providing full contract output of electric energy to the Delivery Point. As soon thereafter as practical, the parties shall schedule a date for inspection and witness testing of System switching and protective equipment and observance of System performance within the operating parameters required by the Interconnection Agreement of the municipal

utility identified in Exhibit 2 (the “**Host Municipality**” or “**Utility**”). The following items must be completed before COD can be declared: (1) certificate of mechanical completion of the System in accordance with the specifications in this Agreement; (2) certificate of performance, inspection and witness testing of the System by the Utility approving interconnection to the Utility’s distribution system; (3) successful completion and verification of meter validation testing for all meters that will be used to measure output for billing purposes; and (4) recorded delivery of full electric energy output under this Agreement to the Delivery Point or a calculation proving that full electric energy output would have been delivered but for suboptimal irradiance conditions. Other deliverables from the Seller as identified in this Agreement or the Utility’s Interconnection Agreement shall be provided prior to or within a reasonable time after the Commercial Operation Date as set forth in a letter agreement to be executed between the Seller and Purchaser confirming achievement of COD.

All energy delivered prior to COD shall be deemed to be Test Energy as defined in Section 2 above.

4. Billing and Payment.

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the attributes of the System and its output purchased and sold hereunder based on the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy delivered to the Delivery Point during the applicable month, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through electronic means. 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. The Contract Price assumes electronic invoicing and that, other than under unique and infrequent circumstances, Purchaser will pay using the automated clearing house method (“ACH”).
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all Taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility’s electric distribution system, including property taxes on the Premises, if any; provided, however, Purchaser will not be required to pay or reimburse Seller for any Taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser’s acts or omissions; and provided further, Purchaser will not pay or reimburse Seller for any Taxes from which Purchaser has a valid exemption, exception, exclusion, waiver, or that do not apply to Purchaser or the Host Municipality for any other reason. The parties will work together in good faith to claim, qualify for and defend any valid exemptions, exceptions, exclusions, waivers, or other non-applicability of such Taxes to Purchaser or the Host Municipality for any other reason. 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 employment related taxes, or 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.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal at the time the dispute begins (but not to exceed the maximum rate permitted by law).

5. Environmental Attributes and Environmental Incentives.

Purchaser is the owner of all Environmental Attributes and Environmental Incentives while the Seller is entitled to the benefit of all Tax Credits. Purchaser’s purchase of electricity under this Agreement does include Environmental Attributes and Environmental Incentives. All Tax Credits and any other attributes of ownership and operation of the System shall be retained by Seller during Term of this Agreement unless and until Purchaser exercises its option to acquire ownership as stated herein. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives, and Purchaser shall cooperate with Seller in obtaining, securing and transferring all Tax Credits. Both Parties shall take reasonable steps to see that the electric energy generated by the System is used in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions for Tax Credits and any other attributes of ownership and operation of the System unless reimbursed by Seller. Purchaser is responsible for any out-of-pocket costs or expenses in connection with any Environmental Attributes or Environmental Incentives. If any Environmental Attributes or Environmental Incentives are paid directly to Seller, Seller shall immediately pay such amounts over to Purchaser.

“Environmental Attributes” means any and all credits, other than the Tax 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 Renewable Energy Credits under the State of Illinois’ Future Energy Jobs Act or the Climate and Equitable Jobs Act or any successor statutes, and any other credits, tags or other rights under any present or future laws and/or regulations of the State of Illinois regarding environmental rights and/or attributes, regardless of how such rights and/or attributes are designated; (b) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (c) 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 (d) 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 under any applicable state or federal program.

“Environmental Incentives” means any and all credits, other than the Tax 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 any other entity with authority to bind a party at law.

“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, including without limitation depreciation benefits and any other attributes of ownership and operation of the System.

6. Conditions to Obligations.

- a. Conditions to Seller’s Obligations.** Seller shall pursue the completion of each of the following conditions in good faith. Seller’s obligations under this Agreement (except those that necessarily occur prior to the Condition Satisfaction Date, including but not limited to Section 7(o)(i)) are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction or waiver thereof by Seller on or before the Condition Satisfaction Date:
- i. Completion of a physical inspection of the Premises including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Premises for the System;
 - ii. Seller has obtained financing for the System on terms and conditions deemed satisfactory by Seller, in its sole discretion or has commenced construction of the System without construction financing;
 - iii. Approval of (A) this Agreement and (B) the construction agreement to build and commission the System by Seller’s Financing Parties, but only if construction of the System has not been commenced by Seller without construction financing, and then only if and to the extent such Financing Parties have been identified by Seller and communicated to Purchaser prior to the commencement of construction of the System by Seller; Exhibit 1 will be revised to show any such Financing Parties prior to the Condition Satisfaction Date;
 - iv. Confirmation that Seller will obtain all applicable Tax Credits;
 - v. Receipt of all necessary zoning, land use and building permits; and
 - vi. Execution of all necessary and reasonable agreements with the Utility for interconnection of the System to the Utility’s electric distribution system; *which, for clarity*, shall include the specifications, costs, schedule and responsible party (either Seller or Utility) of any required Utility system upgrades necessary to interconnect the System and any deposit or security required by the Utility in connection with such upgrades.

- b. **Conditions to Purchaser's Obligations.** Purchaser's obligations under this Agreement (except those that necessarily occur prior to the Condition Satisfaction Date) are conditioned on the completion of the following conditions to Purchaser's reasonable satisfaction or waiver thereof by Purchaser on or before the Condition Satisfaction Date:
- i. Execution of an easement, lease and/or siting agreement with the Host Municipality giving Purchaser the necessary rights to use the Premises for a solar energy project;
 - ii. Seller shall have obtained all permits, approvals, authorizations, variances, waivers and/or exceptions required in connection with the construction of the System on the Premises from all applicable governmental authorities; and
 - iii. Prior to Seller commencing construction and installation of the System, Seller shall give Purchaser proof of insurance for all insurance required to be maintained by Seller under this Agreement.
- c. **Failure of Conditions.** If any of the conditions listed in subsection (a) or (b) above are not satisfied or waived by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon thirty (30) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement. Seller shall be separately responsible for payment obligations, if any, arising under any agreements with the Utility for interconnection of the System.
- d. **Commencement of Construction.** Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of (A) proof of insurance for all insurance (if any) required to be maintained by Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises, as applicable, that such person will recognize Seller's rights under this Agreement for as long as Seller is not in default hereunder, and (C) proof of Purchaser's underlying real property rights necessary to grant Seller the License pursuant to that certain Generation Siting and Operating Agreement, and associated easement, each as entered into with or granted by the Host Municipality.
- e. **Commercial Operation Date Condition.** Purchaser's obligations under this Agreement (except those that necessarily occur prior to the Commercial Operation Date) are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date. If such condition is not satisfied, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then Purchaser may terminate this Agreement upon thirty (30) days written notice to Seller without liability for costs or damages or triggering a default under this Agreement.

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

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any 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 Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Installation of System.** Seller shall design, construct and install the System and all related equipment, as described in Exhibit 2, on the Premises (including the design, engineering, permitting, installation, monitoring, operation and maintenance, interconnection, licensing, permitting, approvals, and paperwork processing for the System including all equipment necessary to meet local, state and national jurisdiction codes). Seller shall be responsible for clearing, grading and conforming to the Premises to meet all local drainage requirements. The solar photovoltaic panels are to be mounted [on south-facing, fixed tilt structures set at an angle for optimum summer performance], or [on structures in north-south rows utilizing a single-axis tracking system]. Vertical support elements for the photovoltaic panel racks are to be designed to meet wind/snow loadings and soil conditions identified for the sites. The System will be designed to meet all applicable local, state and national electric and fire codes as well as all interconnection requirements of the Utility. System performance will be governed by the appropriate provisions of Institute of Electrical and Electronics Engineers (IEEE) standard 1547-2018 and UL 1741. The System will maintain power factor of the delivered energy in the range of 95% lagging to 95% leading and meet or exceed IEEE 519-1992 total harmonic distortion requirements

(THD<3%). The System will be equipped with bi-directional DNP3 communications capability and a Windows-based graphical user interface to allow Purchaser and the Utility the ability to control set points for low voltage ride through, specify operating VAR, limit ramp rates, and monitor input/output parameters including status of panel sub-arrays. System protective features shall include DC reverse polarity protection, ground fault monitoring, AC short circuit protection and carry all applicable UL ratings. The inverter(s) efficiency shall be a minimum of 97%. The System shall include instrumentation to measure and record wind speed/direction, ambient and panel temperatures, and solar irradiance at the site, and Seller shall provide Purchaser with access to the information therefrom. Seller's work in connection with such installation shall be done in a good and workman-like manner and in compliance with all applicable laws, codes and permits, such that under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components, other than normal wear and tear during the Term. Seller shall review preliminary System design and equipment selections with Purchaser and incorporate, as practical, Purchaser's comments and recommendations in the System design and equipment selection process. Seller shall review with Purchaser all substantive System design and/or equipment changes that may occur prior to completion of construction. A copy of "as built" drawings, design documents and equipment settings/operating manuals shall be provided by Seller to Purchaser within 90 days of the Commercial Operation Date.

- c. **Interconnection.** Seller shall design and construct the System to permit interconnection to the Utility's electrical distribution system. Seller shall be responsible for all equipment and all requirements necessary to permit interconnection with the Utility on the low side of the Utility's distribution step up transformer ("**Point of Interconnection**") in accordance with any required governmental codes, rules, regulations, standards, specification, licenses, permits, ordinances and approvals. This work shall include any switching and protective devices, control facilities, connection and safety equipment required for the interconnection and such work shall be free of any defects other than normal wear and tear during the Term. Notwithstanding the foregoing, as between Purchaser and Seller, Purchaser shall remain responsible for all aspects of the step-up transformer that interconnects the System with the Utility, including all such capital costs, installation work and maintenance obligations throughout the Term. Seller shall operate the System to comply with all voltage requirements, intermittent load characteristics or other requirements of the Utility. Seller shall provide a lockable, isolation device at the solar facility interconnection, generally purposed as the facility main breaker. Seller shall be the "Customer" of the Utility for all purposes relating to the System, including but not limited to temporary power during construction and auxiliary power for electronic components of the System before or after the Commercial Operation Date, if needed by Seller. Seller shall comply with all applicable requirements imposed on customers of the electric system under applicable Utility requirements and any applicable municipal codes, ordinances and rules. Seller will execute any reasonable interconnection agreement required by the Utility and shall defend and hold harmless Purchaser for its failure to adhere to any applicable Seller obligation of the interconnection agreement and/or failure to comply or breach thereof, unless such failure to comply or breach is the result of the gross negligence or willful misconduct of the Purchaser.
- d. **OSHA Compliance.** Seller shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- e. **Prevailing Wage.** It shall be the responsibility of the Seller to determine applicability of and to comply, when applicable, with the Illinois Prevailing Wage Act 820 ILCS 130/01 et seq. If applicable, it shall be the responsibility of the Seller to monitor the prevailing wage rates as established by the Illinois Department of Labor and any local government authority for any increase in rates during the project and adjust wage rates accordingly.
- f. **Site Control and Maintenance of the Premises and the System.** Seller shall have control of the site, including any portion of the Premises that is or is to be at or inside the fence of the site, and the System, beginning with commencement of construction. Seller shall, at its sole cost and expense, maintain the site in good condition and repair. Seller, at its expense, shall provide for and maintain the general appearance of the site; aesthetics; erosion control; and vegetation management. "No mow" vegetation groundcovers or pollinator seed mixes may be used within the fenced area of the site to the extent such methods conform to the requirements in local land covenants and in the municipal code or rules of the Host Municipality and are in keeping with the intent of Purchaser and the Host Municipality to showcase the site as a community renewable energy resource. Seller shall also control the growth of weeds at and outside the fence lines of the site. Seller shall promptly notify Purchaser of any matters of which it is aware pertaining to any damage to or loss of use of the Premises or that could reasonably be expected to adversely affect the Premises.
- g. **Security.** Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the Premises and the System against known risks and risks that should have been known by Seller, including but not limited to construction and maintenance of and primary responsibility for an appropriate fence around the portion of the Premises where the System is located to secure the perimeter of the site. Such fencing shall conform to any requirements in the municipal code or rules of the Host Municipality and in the interconnection agreement between Seller and the Utility and shall include one or more lockable gate(s) for service vehicle access. In the absence of any

specific requirements by the Host Municipality and Utility, Such fencing shall conform to standards prescribed by the latest edition of the Public Works Construction (SSPWC or the “Green Book”) Section 206-6, and the specifications of Section 110.31 “Enclosure for Electrical Installations” from the latest version of the National Electric Code and shall include one or more lockable gate(s) for service vehicle access. Seller will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Premises or the System. Seller shall provide emergency response personnel access to an emergency trip switch for the main 480 Volt circuit breaker of the solar generating facility. Access to the emergency trip switch shall be secured by a lock box located immediately outside the facility fence by the main gate.

- h. Purchaser Access to Site.** Seller shall make the Premises available to Purchaser and its Members at all reasonable times with reasonable advance notice for educational tours of the facilities and community interest events related to solar energy. Purchaser shall ensure that all such persons visiting the Premises shall abide by all applicable safety guidelines and safety best practices, and shall fully indemnify and hold Seller harmless from all claims that may arise out of any such visits unless such claim is the result of the gross negligence or willful misconduct of Seller.
- i. 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, except for any repairs or maintenance resulting from Purchaser’s gross negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper operation or maintenance of the System by anyone other than Seller or Seller’s contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller’s contractors’ then current standard rates.
- j. Breakdown Notice.** Seller shall notify Purchaser as soon as reasonably practicable (but in no event later than 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. Such notification from Seller may be provided electronically through an automated email or text message to Purchaser activated by a System equipment general alarm. 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.
- k. Temporary Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to temporarily suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- l. Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- m. Liens and Payment of Contractors and Suppliers.** 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 keep the System and Premises free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Premises following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the System and Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the System and Premises.
- n. Warranty Matters.** This Agreement is a service agreement, and therefore standard concepts of warranty and/or disclaimer of warranties, including without limitation, warranties of merchantability or fitness for a particular purpose, do not apply. Nevertheless, Seller warrants and agrees that it will meet all standards of conduct as required by this Agreement and any additional standards of prudent utility or industry practice applicable to the services provided hereunder.
- o. Performance Assurance.**

- i. **Performance Assurance Prior to COD.** Upon execution of this Agreement, Seller shall provide Performance Assurance in a form acceptable to Purchaser in the amount of \$150,000/MW_{AC} to ensure performance during the period between such execution and the Commercial Operation Date, including good faith efforts to obtain financing, if required, and to meet all other contingencies herein within the control of Seller, and the good faith design and installation of the System. Seller shall maintain such Performance Assurance in effect until Purchaser has or reasonably should have accepted the Commercial Operation Date. Purchaser may call upon the full amount of the Performance Assurance if the letter of credit or other instrument is to expire and not be renewed or replaced ten (10) Business Days prior to such expiration.
 - ii. **Performance Assurance from Seller.** If, and for so long as, Purchaser has reasonable grounds to believe that Seller's creditworthiness or performance under this Agreement has become unsatisfactory, and remains unsatisfactory, or if an assignment is being made to an entity that is less creditworthy than the original signatory of this Agreement at the time the Agreement was signed, Seller shall be required to provide Purchaser with Performance Assurance in accordance with this subparagraph (ii) of subsection (o). Purchaser will provide Seller with written notice requesting Performance Assurance in an amount determined by Purchaser in a commercially reasonable manner (which amount shall not exceed \$1,000,000) to assure performance of Seller's obligations under this Agreement. Upon receipt of such notice, Seller shall have ten (10) business days to provide such Performance Assurance to Purchaser. In the event that Seller fails to provide such Performance Assurance, or a guaranty or other credit assurance reasonably acceptable to Purchaser within ten (10) business days of receipt of notice, then an Event of Default will be deemed to have occurred and Purchaser will be entitled to the remedies set forth under this Agreement. "**Performance Assurance**" means collateral in the form of either cash, Letter(s) of Credit or other security selected by the Party providing such collateral and in form and substance acceptable to the requesting Party. As used in this Section, reasonable grounds to believe that Seller's creditworthiness or performance under this Agreement has become unsatisfactory, and remains unsatisfactory, shall mean that (x) there exists an imminent, threatened or actual material adverse change in the financial condition of Seller or the entity providing the Performance Assurance; or, (y) Seller or the entity providing the Performance Assurance is in default of a material obligation of this Agreement or of the instrument provided as Performance Assurance. "**Letter(s) of Credit**" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.
 - iii. **Performance Assurance from Purchaser.** The Parties acknowledge that Purchaser has a credit rating with both S&P and Moody's that is recognized as being significantly above investment grade. If at any time during the Term hereof there shall occur a Downgrade Event in respect of Purchaser, then Seller may require Purchaser to provide Performance Assurance in an amount determined by Seller in a commercially reasonable manner (which amount shall not exceed \$1,000,000). In the event Purchaser shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Seller within ten (10) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Seller will be entitled to the remedies set forth under this Agreement. It shall be a "**Downgrade Event**" for Purchaser if Purchaser's credit rating falls below BBB- from S&P or below Baa3 from Moody's or if Purchaser is not rated by either S&P or Moody's and its credit rating falls below the investment grade rating for the entity that does its ratings.
- p. **Public Website.** Seller shall maintain, or cause to be maintained, an internet website accessible to the public that displays real time and historic solar array output data from the System reported in user-defined time intervals. Alternatively, Purchaser may elect to develop and maintain such public website.

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

- a. **License to the Premises.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") during the Term of this Agreement for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License**")

Term”). During the License Term, Purchaser shall ensure that Seller’s rights under the License and Seller’s access to the Premises are preserved and protected. Purchaser shall not interfere with nor permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party for up to said 120 days for removal of the System by Seller. At request of Seller, Purchaser shall execute a memorandum of License, which shall be in form and substance agreed to by the Parties, acting reasonably. Seller may, at its sole cost and expense, record such memorandum of License with the appropriate land registry or recorder’s office.

b. [Intentionally Omitted]

c. **Purchaser’s Limited Maintenance of Premises.** Purchaser will take reasonable steps to cause the Utility to ensure that the electrical distribution system on the Premises remains interconnected to the Utility’s electric distribution system at all times subject to reasonable and necessary maintenance or forced outages. Purchaser is fully responsible for the maintenance and repair of the step-up transformer that interconnects the System with the Utility, including all such capital costs, installation work and maintenance obligations throughout the Term. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

d. **No Alteration of Premises.** Purchaser shall not make any alterations or repairs to the Premises which could adversely affect the operation and maintenance of the System without Seller’s prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser’s alterations and repairs, shall be done by Seller or its contractors at Purchaser’s cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; and (ii) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller’s owners) would have received with respect to electric energy that would have reasonably been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). All of Purchaser’s alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

e. **Outages.** Purchaser shall be permitted to cause the System to be off line for its operational purposes a total of forty-eight (48) daylight hours (each, a “**Scheduled Outage**”) per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least twenty-four (24) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages by Purchaser exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; and (ii) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller’s owners) would have received with respect to electric energy that would have reasonably been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 10(b). Seller shall be responsible for the safe and reliable operation of the System and the interconnection with the Utility and shall have the sole responsibility for any lost revenue associated with such curtailment or loss of utility.

f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys’ fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.

g. **Security.** Purchaser will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

- h. Insolation.** Purchaser understands that unobstructed access to sunlight (“**Insolation**”) is essential to Seller’s performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause, and shall not in any way authorize anything to be done on the Premises that would interfere with the System’s Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in making commercially reasonable efforts to ensure that the System’s existing Insolation levels are preserved in accordance with the terms of this Agreement. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 0(h) against Purchaser.
- i. Data Access.** Purchaser shall provide Seller with remote access to System meter data, during the Term, through Purchaser’s FTP internet site updated in 5-minute intervals and through a monthly spreadsheet of hourly System meter readings provided electronically. Seller may provide its own site communications if additional or backup remote monitoring capability is desired. In such case, Purchaser will make System meter data available to Seller through an on-site SCADA RTU owned by Seller at Seller’s request. If Purchaser fails to provide Seller with remote access to data on the amount of electric energy generated, or if such method of providing Seller with remote access to such data ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4. Other System data that may include status and alarm data from System inverters, switchgear and protective devices, site conditions including solar irradiance, wind speed, and ambient and panel temperature, and (optionally) live feed from on-site security cameras shall be provided by the Seller to the Purchaser through Seller’s secure internet site.
- j. Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting 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.

9. Change in Law.

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; or (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), which in the case of any of (i) or (ii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination and with respect to System removal by Seller or reimbursement by Seller of System removal costs.

10. Relocation of System.

- a. System Relocation.** If at any time prior to the expiration of the Term or earlier termination of this Agreement as provided herein, Purchaser ceases to have the rights necessary to use the Premises, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same utility system as the terminated System or in a location with similar utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make any such substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Purchaser shall be obligated to provide proof

of Purchaser's right to grant the License at the substitute premises. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.

- b. Costs of Relocation. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Premises and installation and testing of the System at the substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the relocation; and (ii) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have reasonably been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.
- c. Removal; Adjustment for Insolation; Termination. Seller shall remove the System from the vacated Premises prior to the termination of Purchaser's ownership, easement, or other rights to use such Premises. Seller will not be required to restore the Premises to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute premises has inferior Insolation as compared to the original Premises, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Premises, increased to the extent necessary to compensate Seller for reduced revenues from reduced Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) receive as a result of the relocation. If Purchaser is unable to provide such substitute premises and to relocate the System as provided, Seller shall be entitled to terminate this Agreement and Purchaser shall pay to Seller the Termination Payment or the Parties may work in good faith to permit Purchaser to purchase the System.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of the Term of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property and materials comprising the System from the Premises on a mutually convenient date, but in no event later than one hundred and twenty (120) days after the expiration or termination of the Agreement. Excluding ordinary wear and tear, the Premises shall be returned to its original condition including the removal of System mounting pads or other support structures. Seller shall leave the Premises in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Electricity delivered to the electrical distribution system of the Utility shall be measured by the System metering installed and maintained by Purchaser. A diagram with an explanatory legend depicting and describing the metering that makes up the System metering and the method for applying the meter readings to determine levels of usage relevant to this Agreement is included in Attachment B to Exhibit 2. Purchaser shall install, or cause the Utility to install, one or more meter(s), as Purchaser deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter(s) shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Purchaser shall maintain, or cause the Utility to maintain, the meter(s) in accordance with industry standards.

13. **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 to provide Performance Assurance as required by Section 7(o);
- iii. 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 (but not beyond ninety (90) days) 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;
- iv. 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;
- v. Purchaser loses its rights to occupy and enjoy the Premises and fails to offer a substitute location in accordance with Section 10;
- vi. a Party or its guarantor becomes insolvent or is a party to a bankruptcy, financial 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
- vii. Purchaser prevents Seller from installing or interconnecting the System or otherwise performing its duties under this Agreement in a way that prevents the delivery of electric energy from the System and Purchaser fails to make the payment of amounts that otherwise would have been due under this Agreement, other than any portion of such amounts that are subject to a good faith dispute, within ten (10) days following receipt of written notice from the Seller, in which event this Event of Default shall become a Payment Default. Such Default Event shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

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 Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. 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 equal to the [average IMEA bond rate] or [then-current prime rate], as published in the Wall Street Journal) of the excess, if any, of the reasonably expected cost of replacement electric energy from the energy markets of the Regional Transmission Organization serving the regional load over the Contract Price for the reasonably expected production of the System for the remainder of the Term; (2) loss of any attributes associated with the output of the System or with the renewable energy and non-carbon generation aspects of the System based on the electrical energy that would have otherwise been reasonably expected to be produced by the System for the remainder of the Term, including but not limited to the capacity, ancillary services, Environmental Attributes and/or Environmental Incentives that accrue to or otherwise would have been transferred to Purchaser during the remaining Term of this Agreement if it had remained effective for the full Term (Purchaser shall furnish Seller with a detailed calculation of such compensation and reasonable supporting documentation if such a claim is made); (3) any removal costs incurred by Purchaser, and (4) 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 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment and materials (including mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. 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 a 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.
- b. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:
- i. License. Purchaser shall have a sufficient legal real property interest in the Premises to cause it to be used as the site of a solar generating facility in accordance with this Agreement. Purchaser shall have the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises. If Purchaser does not own the Premises, Purchaser has or will have obtained all

required consents from the owner of the Premises to grant the License and enter into and perform its obligations under this Agreement pursuant to that certain Generation Siting and Operating Agreement, and associated easement, each as entered into with or granted by the Host Municipality on or about the date hereof.

- ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser 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 Purchaser is a party or by which Purchaser or the Premises is bound.
- iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Premises' physical configuration is accurate in all material respects.
- iv. Purchaser Status. Purchaser is not a public utility under the Public Utilities Act or the Federal Power Act or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. Hazardous Substances. To the best of Purchaser's knowledge, there are no Hazardous Substances at, on, above, below or near the Premises.
- vi. No Pool Use. No electricity generated by the System will be used to directly heat a swimming pool.

c. Seller's Representatives and Warranties. Seller represents and warrants to Purchaser the following as of the Effective Date and covenants that throughout the Term:

- i. [placeholder]
- ii. Other Agreements. Neither the execution and delivery of this Agreement by Seller nor the performance by Seller 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 Seller is a party or by which Seller or the System is bound.
- iii. Accuracy of Information. All information provided by Seller to Purchaser, as it pertains to the System's physical configuration, Seller's planned use of the System, and Seller's estimated electricity production, is accurate in all material respects.
- iv. Seller Status. Seller 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.

15. System and Premises Damage and Insurance.

a. System and Premises 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; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser and Seller can mutually agree on a price at which Purchaser is willing to purchase the System in its then-current "AS-IS" condition.
- ii. Purchaser's Obligations. If the Premises is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Premises to its pre-existing condition; provided, however, that if more than 50% of the Premises is destroyed during the last five years of the Term, Purchaser may elect either (A) to restore the Premises or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

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

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and

\$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. In addition, Seller shall maintain an overall umbrella policy with a face amount of at least \$5,000,000.

- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 dollars (\$1,000,000) per occurrence and \$2,000,000 dollars (\$2,000,000) annual aggregate or as otherwise required pursuant to the Generation Siting and Operating Agreement with the Host Municipality, and/or the associated easement.
- c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give each Party to this Agreement (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. **Additional Insureds; Certificates.** Seller shall name Purchaser and Host Municipality/Utility as additional insureds on a primary and non-contributory basis under each insurance policy identified above for it, except Seller's workers' compensation insurance. Purchaser shall name Seller as an additional insured on a primary and non-contributory basis under each insurance policy identified above for it. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. 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, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 16(b) and Section 19), Seller shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer, estoppel, or release from such lienholder reasonably satisfactory to Seller. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises (or such other recordable instrument reasonably satisfactory to Seller) in the office where real estate records are customarily filed in the jurisdiction where the Premises is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Premises (if the Premises is not owned in fee simple by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or termination of Purchaser's right to use of the Premises.
- b. **Option to Purchase.** Starting at the end of the six (6th) Contract Year, and at the end of each subsequent Contract Year, Purchaser shall have the right to purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value determined as set forth in Section 16(c) below or the Presumed FMV set forth in the Buyout Schedule shown on Exhibit 1. The term "Contract Year" shall mean the 12 full months after the Commercial Operation Date or each successive anniversary thereof.

Seller has made a good faith estimate of what it believes the fair market value of the System will be at each such date as stated in the Buyout Schedule set forth in Exhibit 1, and Purchaser has accepted such estimates ("Presumed FMV"). Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year, and the purchase shall be complete

prior to the end of the applicable Contract Year. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance thereof, and Seller shall have no further liabilities or obligations hereunder.

- c. **Determination of Fair Market Value.** “Fair Market Value” means the amount that would be paid for the System including the equipment and materials that comprises the System in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition, but it shall be valued as a purchase of such equipment on an as-is, where-is basis, with no warranties (other than applicable equipment manufacturer’s warranties). The avoided costs of removal from the current location shall not be a deduction from the valuation unless Seller has an unsatisfied legal obligation to remove the System at such time. Seller shall make a reasonable determination of Fair Market Value within thirty (30) days after Purchaser has given notice to exercise its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller’s determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The greater of the valuation made by the appraiser or the appropriate value shown in the Buyout Schedule in Exhibit 1 shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and the directors, 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 14 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, 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 17(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 17(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 17(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 17(b) for any Claim for which such notice is not provided if and to the extent that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless Purchaser and all of Purchaser’s Indemnified Parties (and specifically including, without limitation, the IMEA Member municipality that owns the Premises and/or is otherwise hosting the solar project) 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 17(c)(17.c.i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall

indemnify, defend and hold harmless, or shall cause its Member municipality that owns the Premises and/or is otherwise hosting the solar project to indemnify, defend and hold harmless, all of Seller'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, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party 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.

- i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct 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 (ii) in the event that Purchaser is entitled to the Environmental Attributes produced by the System, and a breach of this Agreement by Seller causes Purchaser to lose the benefit of selling such Environmental Attributes to third parties or the use of such Environmental Attributes to meet a renewable portfolio standard, the amount of such lost sales shall be deemed to be direct and not indirect or consequential damages.
- ii. **Actual Damages.** Except with respect to (x) indemnification for third party claims pursuant to this Section 17, (y) matters that are covered by or should have been covered by insurance under Section 15, and (z) damages that result from the gross negligence or willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement plus an additional amount equal to the reasonably established value of the Environmental Attributes that accrue to or otherwise would have accrued or been transferred to Purchaser during the remaining Term of this Agreement if it had continued uninterrupted. Liability for litigation costs and attorney's fees under Section 22(b) shall be in addition to the foregoing limitation. In addition, the foregoing limitation shall not apply if the party seeking to benefit from the limitation failed to maintain insurance as required by this Agreement. The provisions of this Section (17)(d)(ii) shall apply, where otherwise applicable, regardless of whether such liability arises in contract, tort (including negligence), strict liability or otherwise.
- iii. **Time Limitation.** Any action against either Party must be brought within two (2) year after the cause of action accrues.

18. 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; epidemic or pandemic, but not including the currently effective COVID-19 pandemic; economic sanctions that were neither anticipated, announced nor imposed prior to the Effective Date; 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); 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); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- 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 Thirty (30) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event beyond said number of days, 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 and except for Seller's obligation to remove the System from the Premises or reimburse Purchaser for such removal).

19. Assignment and Financing.

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party, and there shall be no indirect assignment by way of a substantial change of ownership or control of either Party or a transfer of the ownership of the System without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, 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) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System if such entity is a Reasonable Substitute as defined herein, (iii) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller if such person is a Reasonable Substitute and (iv) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller if such affiliate or subsidiary is a Reasonable Substitute and remains an affiliate of Seller thereafter. Neither the original signatory of this Agreement nor any assignee that becomes a subsequent assignor shall be released from liability hereunder as a result of any of the foregoing permitted assignments without Purchaser's express consent and then only upon the assumption of Seller's obligations hereunder by the assignee that meets the Reasonable Substitute standard set forth herein. Further, no assignment or subsequent assignment of Seller's rights and/or obligations under this Agreement shall result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld, conditioned, or delayed. It shall not be unreasonable for Purchaser to withhold, condition or delay its consent if the assignee does not meet the Reasonable Substitute standard set forth herein. No assignment subject to the Reasonable Substitute standard set forth herein shall be effective unless and until proof of the required abilities is provided to and accepted by Purchaser. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

For purposes of this Section 19, an entity shall be deemed to be a "**Reasonable Substitute**" only if the entity possesses the requisite knowledge, experience, management, operations and financial resources and abilities to design, engineer, install, maintain and operate the System, and to perform all other remaining obligations of Seller arising under the Agreement, as evidenced by the following: (i) proof of past experience designing, engineering, permitting, constructing and installing at least five (5) solar photovoltaic projects of comparable size through at least the commercial operations stage and current personnel resources with such abilities if the Commercial Operations Date has not yet occurred hereunder; or proof of past experience operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and current personnel resources with such abilities if Commercial Operation Date has already been achieved; (ii) proof of past experience interconnecting renewable generating resources with the transmission systems of and operating in the Regional Transmission Organization (RTO) regions of Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, LLC (PJM) and current personnel resources with such abilities; (iii) proof of past experience financing at least five (5) solar photovoltaic projects of comparable size if the financing has not already been completed and (iii) proof that the entity is not less creditworthy than the original signatory of this Agreement at the

time the Agreement was signed as determined in the sole judgment of the Purchaser. An assignee that does not otherwise meet the creditworthiness requirement may supplement its financial qualifications by providing Purchaser with Performance Assurance in an amount determined by Purchaser in its sole discretion in accordance with Section 7(o)(ii). The prospective Reasonable Substitute shall provide written certification signed by an officer of such entity and reasonable supporting evidence proving that it meets the Reasonable Substitute standard, together with a copy of the assignment and assumption agreement or any other instrument evidencing that such entity has in fact assumed all of the rights and obligations of Seller under the Agreement.

- b. **Contingent Assignment to Host Municipality.** Seller hereby consents, on behalf of itself and any and all future assignees and Financing Parties taking their rights from Seller, to the assignment of this Agreement by Purchaser to the Host Municipality if Purchaser's Power Sales Contract with the Host Municipality comes to an end or is terminated without being extended or renewed during the Term of this Agreement. The Host Municipality has agreed to accept such assignment in the Siting Agreement between itself and Purchaser.
- c. **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, if applicable, 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 such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19(a)(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to Purchaser and such Financing Parties.

20. **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 20(a), except as set forth in Section 20(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 20(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 20(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 20(a), but shall be in addition to all other remedies available at law or in equity; provided however, in no event shall either Party be liable to the other Party for any indirect, special, incidental, or consequential damages with respect to any claim arising out of this Section 20(a) whether based on contract, tort (including negligence) or otherwise.
- 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 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 or by applicable law, 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. Seller acknowledges that Purchaser is a public body subject to the Illinois Freedom of Information Act, and that Purchaser's records are subject to disclosure unless there is an applicable exception.

21. Goodwill and Publicity. Purchaser and the Host Municipality shall have the right to display signs and promotional materials both on-site and off-site to showcase the site as a community renewable energy resource. Neither Party shall use any name, logo, 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 which will not be unreasonably delayed, conditioned or withheld. 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.

22. Miscellaneous Provisions

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Dispute Resolution and Attorneys' Fees.** Any dispute arising from or relating to this Agreement that cannot be resolved by the senior management of the two parties shall be resolved by litigation in the State where the System is located. If the Parties agree, a non-binding mediator may be consulted prior to litigation. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs, which attorney's fees and costs, notwithstanding any provision of this Agreement that might be interpreted to the contrary, shall be in addition to the amounts otherwise due to one Party from the other and not limited by any other provision of this Agreement.
- 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 14 (Representations Warranties and Covenants), Section 7(n) (Warranty Matters), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limitations of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Dispute Resolution and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(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, except where a particular provision of this Agreement calls for a gross negligence standard.
- 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 11 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.** 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 19 and the Host Municipality that is the underlying owner of the Premises as stated herein, 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 or entity.

End of Exhibit