

## VALUE OF DISTRIBUTED ENERGY RESOURCES CREDIT PURCHASE AGREEMENT

THIS VALUE OF DISTRIBUTED ENERGY RESOURCES CREDIT PURCHASE AGREEMENT (THE “AGREEMENT”) IS ENTERED INTO THIS [DAY OF] BY AND BETWEEN (“SELLER”) AND [ ] (“BUYER”). SELLER AND BUYER ARE EACH REFERRED TO HEREIN INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES.”

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Affiliate” of a Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the first Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests) of such Person, whether by contract or otherwise.

“Agreement” means this Agreement and the exhibits and schedules hereto.

“Annual Actual Insolation” means for each calendar year during the Term, the annual actual insolation in units of kWh/m<sup>2</sup> measured using the on-site DAS or if no on-site pyranometer exists using reference location agreed to by the Parties in their reasonable discretion.

“Annual Expected Insolation” means for each year during the Term, the expected insolation in units of kWh/m<sup>2</sup> at the Site calculated using PVSYST modeled with meteorological parameters

“Annual Insolation Factor” means for each calendar year during the Term, the Annual Actual Insolation divided by the Annual Expected Insolation for such year.

“Applicable Law” means any laws, statutes, ordinances, regulations, rules, notice requirements, Governmental Approval requirements, court orders, treaties or other international agreements, agency guidelines, principles of law, including the common law, and orders of any Governmental Authority.

“Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banks in New York are authorized or obligated to close.

“Buyer Default” has the meaning set forth in Section 10.2(a).

“Buyer Termination Notice” has the meaning set forth in Section 10.1(b).

“Buyer’s Account Information” means the Retail Service Address and Buyer’s account number associated with the Retail Service Address, as set forth in **Error! Reference source not found.**

“Buyer’s Allocated Percentage” means Buyer’s allocated portion, stated as a percentage, of the Delivered Energy in a given month, as set forth in **Error! Reference source not found.**

“CDG” means Community Distributed Generation.

“CDG Facility” means a System that satisfies all applicable requirements established by the New York State Public Service Commission in its July 17, 2015 Order Establishing a Community Distributed Generation Program and Making Other Findings issued in Docket No. 15-E-0082, together with any and all supplemental or subsequent Orders issued by the New York State Public Service Commission in Docket Nos. 15-E-0082 and 15-E-0751 regarding such facilities and together with any and all Tariffs applicable to such generation facilities.

“CDG Manager” means the Person, which may be Seller, that manages the subscribers of the CDG Facility. [ ] shall be the designated CDG Manager as of the date of the Agreement.

“Commercial Operation” means that the System: (i) has been fully constructed in accordance with Applicable Law, (ii) is fully operational and generating electricity at full capacity on a commercial basis, (iii) has been interconnected to the Utility’s electric distribution system, and (iv) has received all Government Approvals required to operate and generate electricity.

“Commercial Operation Date” means the date on which the System achieves Commercial Operation, as notified in writing by Seller to Buyer within ten

“Confidential Information” has the meaning set forth in Section 13.1.

“Consolidated Billing Program” has the meaning set forth in Section 5.7.

“Contract Year” means each consecutive 12-month period commencing on the Commercial Operation Date.

“Credit” means the monetary value of the Delivered Energy commensurate with Buyer’s Allocated Percentage

“Creditworthy”

“Credit Value” shall be calculated by Seller in its sole discretion and shall be determined by reference to the relevant Value of Distributed Energy Resources Program rules and the applicable Tariff, for the relevant Billing Period.

“Delivered Energy” means the amount of photovoltaic energy generated by the System and delivered to the Utility as measured at the Production Meter, net of any energy consumed by the System as delivered by the Utility.

“Environmental Attributes” means, without limitation, carbon trading credits, Renewable Energy Certificates or credits, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Force Majeure” has the meaning set forth in Section 9.1.

“Governmental Approval” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses, and approvals from any Governmental Authority required under Applicable Law for construction, ownership, operation and maintenance of the System or for participation in the Value of Distributed Energy Resources Program.

“Governmental Authority” means any (a) federal, national, provincial, state, regional, local, municipal or other government, governmental or public department, central bank, court, tribunal, arbitrator, commission, board, bureau or agency, (b) subdivision, agent, commission, board or authority of any of the foregoing, or (c) any regulatory authority, agency, commission or board of any federal, national, provincial, state, regional, municipal, local or other government.

[“Guarantee” means a guarantee from [\_\_\_] in favor of Seller substantially in the form attached hereto as Exhibit [\_\_\_].]

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Site.

“Interconnection Obligations” has the meaning set forth in Section 6.1(c).

“Interconnection Procedures” has the meaning set forth in Section 6.1(c).

“Interest Rate” means a rate per month equal to the lesser of (a)

“Invoice Date” has the meaning set forth in Section 5.2.

“kWh” means kilowatt-hour, a measure of energy.

“kWh Rate” means [ninety] percent

“Lender” means, any Person who has made or will make a loan to or otherwise provide financing to Seller (or an Affiliate of Seller) with respect to the System, including any equity investors.

“Losses” means all losses, liabilities, claims, injuries, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses sought by a third party (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims).

“Party” or “Parties” has the meaning set forth in the preamble.

“Payment” has the meaning set forth in Section 5.1.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Production Meter” means the revenue quality meter installed, operated and maintained by the Utility to measure electricity generated by the System.

“PVSYST” means a technical software program that uses third party meteorological data to design, simulate and model photovoltaic system generation.

“Qualified Third Party” means a Person with at least 25 megawatts (MW) of community or distributed solar, or at least 400 MW of utility scale solar, in operation, but shall not include any Person listed on Schedule [\_\_\_].

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Solar Incentives and the Credits.

“Retail Service Address” is the address at which Buyer receives retail electric service from the Utility, as set forth in **Error! Reference source not found.**

“Seller” has the meaning set forth in the preamble.

“Seller Default” has the meaning set forth in Section 10.1(a).

“Site” means the physical location where the System is to be constructed.

“Site Restrictions” means those requirements or limitations related to the Site as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and all other solar or renewable energy subsidies and incentives.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Error! Reference source not found. that generates electricity.

“System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Tariff” means the Utility tariff for interconnection for distributed generation and compensation under the Value of Distributed Energy Resources Program, and as approved by the New York State Public Service Commission, together with any subsequent amendments and approvals thereto.

“Term” has the meaning set forth in Section 2.1.

“Termination Fee” means a fee payable by Buyer resulting from a Buyer Default, or Buyer’s termination of this Agreement in a given year before the end of the Term, equal to the amount specified on Schedule 2.

“Utility” means the distribution company set forth on Error! Reference source not found.

“Value of Distributed Energy Resources Program” means the program that provides for the creation and allocation of monetary Utility bill credits pursuant to the crediting methodology known as the “Value Stack,” established by the New York State Public Service Commission (and implemented by the Tariff) pursuant to the March 9, 2017 Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters, together with any and all supplemental Orders issued by the New York State Public Service Commission in Docket Nos. 15-E-0751 and 15-E-0082 and together with any Tariffs following therefrom.

1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of this Agreement.

## 2. TERM AND TERMINATION.

2.1 Term. The term (the “Term”) of the Agreement shall commence on the date of this Agreement and shall continue

2.2 Seller Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination.

(a) There exist site conditions (including environmental conditions and ecological concerns such as presence of wildlife species) at the Site or construction requirements that could not have been reasonably known as of the date of this Agreement and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) There has been a material adverse change in the (i) rights of Seller to construct the System on the Site, (ii) Value of Distributed Energy Resources Program or Applicable Law, or (iii) regulatory environment or availability of Solar Incentives (including the failure of the System to qualify for or expiration of any incentive program or tax incentives in effect as of the date of this Agreement).

(c) Seller has not received evidence reasonably satisfactory to it that interconnection services or net metering will be available with respect to energy generated by the System.

(d) Seller has determined that there are easements, Site Restrictions, other liens or encumbrances, or other facts, circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the System.

(e) Seller has determined that Buyer is not Creditworthy.

(f) Seller is unable to obtain financing for the System on terms and conditions reasonably satisfactory to Seller.

(g) Buyer's representation and warranty contained in Section 7.2(e) or Section 7.2(f) is no longer true and correct.

(h) A Buyer Default has occurred.

### 2.3 Early Termination by Buyer without Cause.

2.4 Right to Terminate this Agreement. In addition to other termination rights of a Party set forth herein, Buyer may terminate this Agreement with

## 3. SYSTEM OPERATIONS.

3.1 Seller as Seller and Operator. Throughout the Term, Seller or Seller's Lender shall be the legal and beneficial owner of the System at all times, the System shall remain the personal property of Seller or Seller's Lender, and the System will be operated and maintained in accordance with the Tariff and, as necessary, repaired by Seller at its sole cost and expense. Buyer will not have access to the System for any purpose. Buyer will have no ownership, possession right or control of the System, and will have no rights or obligations with respect to the operation and maintenance of the System. This Agreement does not convey to Buyer any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the System or any Environmental Attributes or Solar Incentives.

3.2 Obligations of Parties. The Parties will work cooperatively and in good faith to meet all Value of Distributed Energy Resources Program requirements under Applicable Law and the Tariff, including applicable interconnection and metering requirements. The Parties agree that commencing on the Commercial Operation Date (a) Seller shall deliver Buyer's Allocated Percentage of the Delivered Energy to the Utility, and (b) Buyer (or its designee) shall be entitled to any and all Credits resulting from such delivery. This Agreement does not convey to Buyer any right, title or interest in or to the Delivered Energy or any Environmental Attributes.

3.3 Environmental Attributes and Solar Incentives. Buyer's purchase does not include Environmental Attributes or Solar Incentives. Buyer disclaims any right to Solar Incentives or Environmental Attributes, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section 3.3. Buyer agrees not to make any statement contrary to Seller's ownership of all Environmental Attributes and Solar Incentives associated with the System.

4. REALLOCATION; ADDITIONAL CAPACITY.

4.1 Reallocation. To enable ongoing buyer balancing across systems, Seller reserves the right, at its option and in its sole discretion, to assign all or a portion of Buyer's Allocated Percentage among one or more systems that qualify for the Value of Distributed Energy Resources Program, so long as such reallocation is also made to other eligible systems in the same Utility's service territory. The Parties agree to modify any terms of this Agreement as necessary to effectuate or reflect the details of such assignment(s). Seller will provide Buyer reasonable notice of any such assignment. To effectuate such assignment, Seller will provide Buyer revised copies of Schedule 1 and Schedule 2, as applicable. Upon Buyer's receipt of such revised Schedule(s) the Agreement will be deemed to incorporate such revised Schedules without further action by the Parties.

4.2 Additional Capacity. Buyer may elect to purchase Credits, associated with an additional allocation of the Delivered Energy from the System or another system (pursuant to a separate contract) if so available, and if doing so would not violate any terms of the Value of Distributed Energy Resources Program.

5. PRICE AND PAYMENT.

5.1 Consideration. In consideration for Seller's delivery of Buyer's Allocated Percentage of the Delivered Energy to the Utility and Buyer's right to receive Credits corresponding with Buyer's Allocated Percentage of Delivered Energy, Buyer shall pay Seller a monthly payment (the "Payment") for such Credits commencing on the Commercial Operation Date and continuing through the Term, equal to the product of (x) the Delivered Energy for the relevant month, *multiplied by* (y) the kWh Rate, *multiplied by* (z) Buyer's Allocated Percentage. Buyer understands that the kWh Rate is based on the Credit Value and that, because the Credit Value will change from time to time, the kWh Rate will increase and decrease during the Term.

5.2 Invoices. Seller shall invoice Buyer on or before the last Business Day of each calendar month (each such date on which an invoice is issued by Seller to Buyer, an "Invoice Date") for the Payment in respect of Credits corresponding with Buyer's Allocated Percentage of Delivered Energy produced during the immediately preceding calendar month. Buyer's first invoice under this Agreement shall be for the first full calendar month after the Commercial Operation Date in which Credits corresponding with Buyer's Allocated Percentage of Delivered Energy are issued. For the avoidance of doubt, Buyer shall (i) neither receive nor be entitled to any Credits associated with Delivered Energy prior to the Commercial Operation Date, and (ii) have no obligation to make or any liability for Payments for Credits associated with Delivered Energy prior to the Commercial Operation Date.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of Buyer's receipt of the applicable invoice. Interest will be charged on late Payments at the Interest Rate until Buyer has fully paid the past due balance.

5.4 Method of Payment. Buyer shall make all Payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Seller from time to time. If Buyer does not have electronic funds transfer capability, the Parties shall agree to an alternative method for submitting Payments. Except for billing errors or as provided in Section 5.5 below, all Payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Payment of the disputed amount shall not be required until the dispute is resolved. If an amount disputed by Buyer is subsequently deemed to have been due by the Buyer pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount from the date becoming past due under such invoice until the date paid. Inadvertent overpayments, including as a result of a disputed invoice resolved in Buyer's favor, shall be returned promptly or deducted by the Party receiving such overpayment from subsequent payments.

5.6 Billing Adjustments Following Utility Billing Adjustments. If, as a result of a Utility billing adjustment, the quantity of Delivered Energy is decreased (the “Electricity Deficiency Quantity”) and the Utility reduces the amount of Credits allocated to Buyer for such period, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Delivered Energy allocated to Buyer is increased (the “Electricity Surplus Quantity”) and the Utility increases the amount of Credits allocated to Buyer for such period, Buyer shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

5.7 Consolidated Billing. Buyer agrees that Seller shall have the right, in its sole discretion, to enroll the System and Buyer’s account identified in Schedule 1 into the Utility’s consolidated (net crediting) billing program, as described in Case 19-M-0463, In the Matter of Consolidated Billing for Distributed Energy Resources (the “Consolidated Billing Program”). Under the Consolidated Billing Program, the monthly Payments due under Section 5.1 shall be automatically taken from the Credits Buyer receives on its utility bill and paid to Seller by the Utility. Upon the System’s entry into the Consolidated Billing Program, the invoice and payment language included in this Agreement will cease effect and be superseded by the consolidated billing procedures, unless and until the System and/or Buyer’s account is removed from the Consolidated Billing Program.

## 6. GENERAL COVENANTS.

6.1 Seller’s Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall promptly notify Buyer if it becomes aware of any significant damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

(b) Governmental Approvals. While providing the Installation Work and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(c) Interconnection Fees. Seller shall be responsible for all costs, fees, charges and obligations required to connect the System to the Utility distribution system (“Interconnection Obligations”), including any fees associated with system upgrades and operation and maintenance carrying charges, as provided in the interconnection procedures of the Utility (“Interconnection Procedures”). In no event shall Buyer be responsible for any Interconnection Obligations.

(d) Compliance with Tariff and Interconnection Procedures. Seller shall cause the System to be installed, maintained and operated in compliance with the Tariff and the Interconnection Procedures.

(e) Buyer’s Account Information. Seller shall be responsible for providing Buyer’s Account Information to the Utility, in accordance with the Tariff. Seller shall take care to preserve the privacy expectations of Buyer, including by not publicly disclosing Buyer’s Account Information. Seller shall not disclose such information to third parties, other than to the CDG Manager, Utility, or Governmental Authorities in connection with the Value of Distributed Energy Resources Program, unless Buyer has provided explicit informed consent or such disclosure is in accordance with the terms of Section 13.1 or compelled by Applicable Law.

(f) Communications. Seller shall designate a representative to be available to Buyer to address all operational matters under this Agreement. This representative shall be Seller or, if different, the CDG Manager. Seller shall use best efforts to respond to communications from Buyer within five (5) Business Days after receiving Buyer communications.

(g) Insurance Coverage. Seller shall provide proof of insurance at Buyer’s request of coverage sufficient to repair, restore or rebuild the System in the event of significant damage or loss in the use of the System. Coverage shall include General Liability Insurance, which includes contractual liability and completed operations insurance for damages arising out of Seller’s negligence.

(h) **[Guarantee. As of the date hereof, Buyer shall have delivered to Seller the duly executed Guarantee.]**

6.2 Buyer's Covenants. Buyer covenants and agrees as follows:

(a) Consents and Approvals. Buyer shall ensure that any authorizations required of Buyer under this Agreement are provided in a timely manner. To the extent that only Buyer is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Buyer shall cooperate with Seller to obtain such approvals, permits, rebates or other financial incentives.

(b) Buyer's Account Information. To the extent Buyer's Account Information is not fully set forth in **Error! Reference source not found.** as of the date of this Agreement, Buyer shall provide Seller with such information within thirty (30) days of the date of this Agreement.

## 7. REPRESENTATIONS & WARRANTIES.

7.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the date of this Agreement that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation 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;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;
- (f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and
- (g) no Bankruptcy Event has occurred and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in a Bankruptcy Event.

7.2 Specific Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the date of this Agreement that:

(a) (i) Buyer is an "accredited investor" as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) Buyer is an incorporated municipality or governmental subdivision with total assets in excess of \$5,000,000; provided, however, that notwithstanding the representation and warranty set forth in (i), the Parties agree that this Agreement is not, and is not intended to be, a security under applicable state and federal securities laws;

(b) Buyer is the sole party in interest agreeing to purchase Credits corresponding with Buyer's Allocated Percentage of Delivered Energy and is acquiring such Credits for its own account and not with a view to the resale or



other distribution thereof, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of such Credits in any manner that will violate applicable securities law. Buyer is aware that this Agreement and the Credits corresponding with Buyer's Allocated Percentage of Delivered Energy have not been registered under the Securities Act or registered or qualified under the securities laws of the state in which Buyer resides or is located based in part upon the representations of Buyer contained herein;

(c) Buyer has been given the opportunity to ask questions of, and receive answers from, Seller concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement, and has been given the opportunity to obtain such additional information necessary in order for Buyer to evaluate the merits and risks of the purchase of Credits corresponding with Buyer's Allocated Percentage of Delivered Energy to the extent Seller possesses such information or can acquire it without unreasonable effort or expense;

(d) Buyer is not relying on Seller or any of its employees, members of its board of directors (or equivalent body) or officers, or this Agreement with respect to tax and other economic considerations involved in the investment;

(e) Buyer is a retail electric service customer of the Utility and the Retail Service Address is within the same Utility's service territory as the System;

(f) Buyer is not an electric utility, generation company, aggregator, supplier, energy marketer, or energy broker; and

(g) Buyer is Creditworthy.

7.3 Specific Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the date of this Agreement that:

(a) The System does not infringe on any third party's intellectual property; and

(b) (i) it has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended, and (ii) it is not an electric utility subject to the rate regulation by any Governmental Authority.

7.4 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PERFORMANCE BY SELLER HEREUNDER SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO BUYER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

8. TAXES AND GOVERNMENTAL FEES. Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Seller shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues, as applicable. Buyer is responsible for any and all taxes assessed on the generation, sale, delivery, or consumption of Delivered Energy or Credits. In the event that Seller is assessed any taxes for which Buyer is responsible hereunder, and to the extent permitted under Applicable Law, Seller shall invoice Buyer for the amount of such taxes to the extent paid by Seller. All such taxes shall be remitted to the appropriate taxing authority by Seller in a timely manner.

9. FORCE MAJEURE.

9.1 Definition. "Force Majeure" means (a) with respect to Seller, any act or event that prevents Seller from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of Seller and Seller had been unable to overcome such act or event with

the exercise of due diligence (including the expenditure of reasonable sums); and (b) with respect to Buyer, the repeal or modification by a Governmental Authority of legislation and/or regulations enabling the Value of Distributed Energy Resources Program such that Buyer is no longer able to receive the anticipated Credits under this Agreement. Subject to the foregoing conditions, “Force Majeure” shall include, without limitation, acts of God or the public enemy; war; hostilities; riots; terrorism; abnormally adverse weather conditions not reasonably anticipatable by the Parties; fires; floods; volcanic eruptions; explosion; accidents; riots; vandalism; regional strikes or other significant regional labor disputes; a Governmental Authority’s actions or failure to act; a utility’s actions or failure to act; or any event of force majeure under the Interconnection Procedures.

9.2 Excused Performance. Except as otherwise specifically provided in the Agreement, a Party shall not be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure; *provided* that such Party shall as soon as reasonably practical (i) notify the other Party in writing of the existence of the Force Majeure, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

9.3 Termination in Consequence of Force Majeure. If a Force Majeure shall have occurred that has affected Seller’s performance of its obligations hereunder and that has continued for a continuous period of thirty (30) days or more, then Seller shall be entitled to terminate the Agreement. Upon such termination for a Force Majeure, Buyer shall be responsible for making any and all payments up to the start of such Force Majeure event.

## 10. DEFAULT.

### 10.1 Seller Defaults and Buyer Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a “Seller Default”):

(i) Except as otherwise expressly permitted in this Agreement, Seller terminates this Agreement before the end of the Term;

(ii) Seller is in breach of any representation or warranty or fails to perform any material obligation as set forth in this Agreement and (A) if such breach or failure can be cured within thirty (30) days after Buyer’s notice of such breach or failure and Seller fails to so cure, or (B) Seller fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; or

(iii) A Bankruptcy Event occurs with respect to Seller.

(b) Buyer’s Remedies. If a Seller Default described in Section 10.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 11, Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided, however, that no termination shall be effective under this Section 10.1(b) unless:

(i) Buyer has delivered to Seller a notice of its intent to terminate this Agreement, which such notice shall describe the Seller Default that has occurred and is continuing (“Buyer Termination Notice”);

(ii) thirty (30) days have passed since Seller’s receipt of the applicable Buyer Termination Notice; and

(iii) Seller has not cured the Seller Default set forth in the applicable Buyer Termination Notice as of the time of termination.

(c) In the event of a termination under Section 10.1(b), Buyer shall use reasonable efforts to mitigate its damages. Buyer shall not be required to pay any Termination Fee for exercising its rights under Section 10.1(b).

10.2 Buyer Defaults and Seller's Remedies.

(a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

(i) Except as otherwise expressly permitted in this Agreement, Buyer terminates this Agreement before the end of the Term;

(ii) Buyer fails to make any payment when due in accordance with Section 5 and such nonpayment is not cured within after notice of such nonpayment has been received by Buyer;

(iii) Subject to foregoing clause (ii), Buyer breaches any representation or warranty or any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; or

(iv) A Bankruptcy Event occurs with respect to Buyer.

(b) Seller's Remedies. If a Buyer Default described in Section 10.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 11, Seller may exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:

(i) terminate this Agreement, and, at Seller's option, sell Buyer's Allocated Percentage to one or more Persons other than Buyer, and recover from Buyer any loss in revenues resulting from such sales (less revenue received by Seller from selling Buyer's Allocated Percentage to others); provided that, in the event of such termination, Seller shall use reasonable efforts to mitigate its damages;

(ii) terminate this Agreement and collect the Termination Fee; and

(iii) exercise any other remedy it may have at law or equity or under the Agreement.

11. INDEMNIFICATION/LIMITATIONS OF LIABILITY.

11.1 Except to the extent caused by the negligent or wrongful acts or omissions of the Party seeking indemnification hereunder, and subject to the limitations in Section 11.2, Section 11.3 and Section 11.4 below, each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their respective officers, directors, employees, customers, agents and representatives from and against any and all Losses arising out of or relating to: (i) material breach of any obligation, representation or warranty under this Agreement by the indemnifying Party; or (ii) any negligent act or omission of the indemnifying Party or its employees, contractors or agents in performance of its obligations hereunder.

11.2 Except for the Parties' indemnity obligations under Section 11.1 and any payment of the Termination Fee required hereunder, neither Party will be liable to the other Party for general, special, punitive, exemplary, indirect, incidental or consequential damages arising from or out of this Agreement.

11.3 The total liability of either Party under this Agreement will in no event exceed the aggregate of all amounts paid or payable by Buyer under this Agreement during the preceding twelve (12) months; provided, however, that the above limitation on a Seller's maximum liability does not apply with regard to any claims related to property damage or personal injury caused by gross negligence or willful misconduct of Seller, or Seller's indemnity obligations under Section 11.1.

11.4 THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIMS ARISING OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER.

12. ASSIGNMENT.

12.1 Assignment by Seller. Seller may assign this Agreement along with all of Seller's rights and obligations to any Affiliate or Qualified Third Party without the consent of Buyer, for any purpose, including in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity, or assignment of this Agreement as collateral security in connection with any financing of the System (including pursuant to a tax equity transaction); provided that for assignments to Qualified Third Parties (other than Lenders), Seller shall provide Buyer with notice of such assignment together with information reasonably documenting that the assignee is financially stable, has comparable experience in operating and maintaining solar systems comparable to the System, and can perform Seller's obligations hereunder. In the event that Seller identifies such secured Lender, then Buyer shall comply with the provisions set forth in Exhibit A to this Agreement. Any Lender shall be an intended third-party beneficiary of this Section 12.1.

12.2 Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Lender as an assignee, then Buyer hereby:

(a) acknowledges and agrees to the collateral assignment by Seller to the Lender, of Seller's right, title and interest in, to and under the Agreement, as consented to under Section 12.1 of the Agreement;

(b) acknowledges and agrees that the Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller's interests in this Agreement;

(c) acknowledges and agrees that it has been advised that Seller has granted a first priority perfected security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System; and

(d) agrees to execute a consent agreement or estoppel certificate in a form reasonably satisfactory to Seller.

Any Lender shall be an intended third-party beneficiary of this Section 12.2.

12.3 Assignment by Buyer.

(a) Buyer shall not assign this Agreement or any interest herein, without the prior written consent of Seller (except to a wholly-owned subsidiary of its parent or to an entity under common control, or pursuant to a merger, consolidation, reorganization, or a sale of substantially all of its assets, for which no consent is required, provided that, Buyer delivers to Seller written notice of such assignment, as soon as reasonably practicable, and such assignment does not affect the Guarantee, which shall remain in place and in full force and effect); provided, however, that Seller shall not unreasonably withhold, condition or delay its consent for Buyer to change the Retail Service Address for which the Credits will apply to another Retail Service Address that is eligible under the Value of Distributed Energy Resources Program to subscribe to the CDG Facility, nor shall Seller unreasonably withhold, condition or delay its consent for Buyer to sell or transfer its interest or a fractional interest in this Agreement to another party with a credit rating that is equivalent or better than Buyer's and who agrees to comply with and assume all provisions under this Agreement (including, for the avoidance of doubt, pricing terms) and meets the requirements under Section 12.3(b). Such transfer shall be treated as a contract novation from the Buyer to the new party to the extent that such party expressly assumes Buyer's responsibilities under this Agreement. In accordance with and subject to this Section 12.3, Buyer may transfer any fraction of its interests in this Agreement up to and including the full Buyer's Allocated Percentage which would represent a full assignment.

(b) Buyer's request for Seller's consent to any proposed change or assignment as contemplated in Section 12.3(a) shall be in writing and furnished to Seller at least thirty (30) days prior to the proposed effective date of such change or assignment, which request must include: (i) Buyer's name and mailing address; (ii) the current Retail Service Address; (iii) the new Retail Service Address (if applicable); (iv) the name of the individual or entity to whom Buyer is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to Buyer for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity, (i) such assignee's Retail Service Address shall be located within the Utility's service territory as the System, (ii) such assignee shall be Creditworthy, (iii) such assignee shall have a substantially similar eligible load to Buyer, (iv) Buyer shall reimburse Seller for Seller's reasonable, documented transaction costs associated with such assignment, (v) such assignee shall execute a novation agreement of this Agreement which shall specifically include the representations and warranties set forth in Section 7.2 and a representation and warranty that such assignee is Creditworthy, and (vi) such assignment shall be effective upon the later to occur of (A) the proposed effective date of such assignment and (B) the date upon which the Utility shall have approved such assignment.

(c) Upon any assignment of this Agreement pursuant to this Section 12.3, Buyer will surrender all right, title and interest in and to the portion of this Agreement that has been assigned. Any purported assignment in contravention of this Section 12.3 shall be of no force and effect and null and void ab initio. No assignment will extend the Term of this Agreement.

(d) If Buyer terminates its retail electric service with the Utility without first transferring Buyer's Allocated Percentage to an eligible transferee, or otherwise cannot receive Credits for any reason, Buyer will forfeit its right to receive Credits, but will continue to be responsible for the Payments under this Agreement until this Agreement is terminated pursuant to the terms in this Agreement.

### 13. CONFIDENTIALITY.

13.1 Confidentiality Obligations. Each Party ("Recipient") acknowledges that it may have had, and may in the future have, access to confidential information of the other Party ("Discloser"), including without limitation: (i) information concerning in any respect the business, products or services, business plans, methods, or strategies, financial information, advertising, promotional and marketing plans and strategies, customers, suppliers, employees, contractors and alliances, any proprietary, patented, licensed, copyrighted or trademarked information, technical information regarding the financing, design, operation and maintenance of the System, and/or technology and hardware and software systems (whether owned or under license) of Discloser or its Affiliates; and (ii) third party information that Discloser is obligated to keep confidential, whether disclosed prior to or after the Effective Date, whether such information is disclosed orally, in writing or electronically, and whether or not specifically marked or confirmed as "confidential" or "proprietary" (collectively, "Confidential Information"). The existence and terms of this Agreement shall be deemed Confidential Information of each Party.

13.2 Ownership, and Use. Recipient agrees to keep strictly confidential all Confidential Information of Discloser, and that such Confidential Information is and shall remain the exclusive property of Discloser. Recipient may use Confidential Information only: (i) in connection with its performance under this Agreement; and (ii) for any other purpose expressly authorized in writing by Discloser. The disclosure of Confidential Information shall not constitute an express or implied grant or license to Recipient of any rights to or under Discloser's patents, copyrights, trade secret rights, trademark rights or any other intellectual property rights.

13.3 Degree of Care; Access by Employees. Without limiting any other obligation hereunder, Recipient agrees to use the same degree of care to avoid the unauthorized disclosure, dissemination or use of Confidential Information of Discloser as Recipient uses to protect its own confidential information, but in no case less than reasonable care. Recipient shall restrict the possession, knowledge and use of Confidential Information to the directors, officers, employees, agents, Lenders and advisors to Recipient and any of its Affiliates (collectively, "Representatives") who have a need to know such Confidential Information consistent with Recipient's limited right to use the same hereunder. Prior to Recipient making any disclosure of Confidential Information to a Representative, Recipient shall advise the Representative of the confidential and proprietary nature of the Confidential Information and the terms and conditions of this Article 13. Any prohibited disclosure or use of Confidential Information by any Representative shall be deemed a breach hereof by Recipient.

13.4 Permissible Disclosures. Recipient may disclose Confidential Information of Discloser as required to comply with a valid subpoena or order of a Governmental Authority or court, or as otherwise may be required by Applicable Law, provided that Recipient gives Discloser prompt written notice to allow Discloser to seek a protective order or other appropriate remedy (except to the extent Recipient's compliance with the foregoing would cause it to violate a court order or other legal requirement). Notwithstanding any other provision herein, but subject to the provisions of Section 6.1(e), the definition of Confidential Information excludes, and neither Party shall be required to hold confidential, any information that:

(a) was known to Recipient and with respect to which Recipient was under no confidentiality obligation at the time of disclosure by Discloser;

(b) is or becomes publicly available other than through the Recipient and without breach of this Agreement;

(c) is independently developed by the Recipient without the aid of or reference to any Confidential Information; or

(d) is received by or becomes available to the Recipient without restriction from a third party under no obligation of confidentiality, and who did not acquire such information through a wrongful or tortious act or disclose such information in breach of any confidentiality obligation.

13.5 Goodwill and Publicity. Seller agrees not to disclose any Buyer information in connection with Seller's marketing and promotional materials without the prior written consent of Buyer in each instance. Buyer agrees not to use Seller's name, logo, trademark, trade name, service mark, or other Seller intellectual property in any marketing or promotional materials without the prior written consent of Seller in each instance. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Buyer shall submit to Seller for approval any press releases regarding the Agreement and shall not submit for publication any such releases without the prior written approval of Seller.

13.6 Return of Confidential Information. Upon request by Discloser, Recipient shall promptly return or destroy the originals and all copies in all media of all documents containing Confidential Information of Discloser then in Recipient's possession or control (including all electronically stored copies), except as may be required to be retained by law or for archival purposes. Any such Confidential Information retained by Recipient hereunder shall remain subject to the confidentiality obligations of this Agreement. If Discloser requests that Confidential Information be destroyed, an authorized representative of Recipient shall certify the same has been completed in writing to Discloser within

13.7 Equitable Relief. Recipient acknowledges that disclosure or use of Confidential Information of Discloser in violation of this Agreement may cause irreparable harm to Discloser for which monetary damages may be an inadequate remedy and difficult to ascertain. Recipient therefore agrees that Discloser shall have the right to seek injunctive or other equitable relief for any violation of the confidentiality provisions of this Agreement by Recipient, in addition to any other rights and remedies that Discloser may have at law.

#### 14. MISCELLANEOUS.

14.1 Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including representations, warranties, remedies, or indemnities that, by their nature, should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

14.2 Entire Agreement. The Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof. There are no agreements, understandings, representations or warranties between the Parties other than those set forth herein and in the Agreement.

14.3 Amendments and Modification. Except as expressly provided in Section 4.1, this Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party. In the event any provision of this Agreement would, in the reasonable judgment of Seller, be reasonably expected to result in Seller's non-compliance with any provision in the Tariff (as the same may be amended or revised from time to time), the Parties shall exercise commercially reasonable efforts to negotiate an amendment to this Agreement to conform the applicable provision(s) of this Agreement to the applicable provisions in the Tariff.

14.4 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the United States shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

14.5 No Waiver. Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other provision of this Agreement on any future occasion, and, unless otherwise set forth in this Agreement, no failure or delay on the part of any Party in exercising any rights, powers or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy thereunder. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, will not constitute a waiver by that Party of its rights with respect to that default. Subject to Section 11 of this Agreement, all remedies, either under this Agreement or by law or in equity, shall be cumulative and not alternative.

14.6 Relationship of the Parties. Nothing contained in this Agreement will be construed as constituting a joint venture or partnership between the Parties. Neither Seller nor Buyer shall have any authority to enter into agreements of any kind on behalf of the other Party and shall not have the power or authority to bind or obligate the other Party in any manner to any third party. Seller and Buyer shall be independent parties and shall discharge their contractual obligations at their own risk.

14.7 Governing Law. This Agreement shall be governed by and construed in accordance with laws of the State of New York, without reference to choice of laws that would require the application of the law of another jurisdiction. All actions or proceedings arising in connection with this Agreement may be tried and litigated in the courts of the State of New York or the United States federal courts located in the District of New York. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that such courts shall have in personam jurisdiction over each of them for the purpose of litigating any such dispute, controversy, or proceeding. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 14.7 by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in Section 14.11. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

14.8 Severability. Subject to Section 14.3, if any provision contained herein is invalid, illegal or unenforceable in any respect under any Applicable Law or decision, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way, and the Parties shall so far as practicable execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal or unenforceable.

14.9 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective authorized successors and permitted assigns.

14.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. Signatures delivered by facsimile or portable document format (pdf) shall be deemed to be original signatures.

14.11 Notices. Any notice to be given hereunder shall be in writing and shall be sent by registered prepaid first class mail, overnight courier or by facsimile copy to the persons or addresses specified below (or such other person or address as a Party may previously have notified the other Party in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by registered prepaid first class mail or overnight courier as aforesaid, on the date delivered. The names and addresses for the service of notices referred to herein are:

Buyer:  
[Company name]

[Insert Address]  
Attn: [POC]

*with a copy to:*

Email: []

Seller:  
[Company name]

[Company name]

*with a copy to:*

Email: []

**Financing Party:**

[To be provided by Seller when known]

[Signature Page Follows]



**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement on the day and year first above written.

“SELLER”:

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

Name:

Title:

“BUYER”:

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

Name:

Title:

## EXHIBIT A

### Certain Agreements for the Benefit of the Financing Parties

1. Lender Conditions. In order to finance the development and operation of the System, Seller may borrow money or otherwise seek investment from a Lender (as defined in the Agreement). Buyer acknowledges that Seller may finance the acquisition, development, installation, operation and maintenance of the System with financing or other accommodations from one or more financial institutions and that Seller's obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of the Agreement and a first priority security interest in the System (collectively, the "Security Interest"). In order to facilitate the necessary financing, Buyer consents to Seller's granting to the Lender the Security Interest.

Buyer acknowledges and agrees that: (i) Buyer and all of Buyer's rights under the Agreement are and will be subject and subordinate to the Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and (ii) no amendment or modifications of the Agreement is permitted without the Lender's written consent.

2. Lender's Default Rights. If Seller defaults under the financing documents with the Lender, the following provisions apply:
  - A. The Lender, through its Security Interest, will be entitled to exercise any of Seller's rights and remedies under the Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreement and the System.
  - B. The Lender will have the right, but not the obligation, to pay all sums due from Seller under the Agreement and to perform any other act, duty, or obligation required of Seller, and to cure any default by Seller in the time and manner provided by the terms of the Agreement. Nothing requires the Lender to cure any default by Seller (a "Seller Default") under the Agreement, to perform any act, duty or obligation of Seller under the Agreement, unless the Lender has succeeded to Seller's rights under the Agreement, but Buyer hereby gives Lender the option to do so.
  - C. If the Lender exercises its remedies under the Security Interest, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Lender (or its assignee) in lieu of sale, the Lender will give Buyer notice of the transfer or assignment of the Agreement. If Lender exercises these remedies, it will not constitute a default under the Agreement, and will not require Buyer consent.
  - D. Upon any rejection or other termination of the Agreement under any process undertaken with respect to Seller under the United States Bankruptcy Code, Buyer agrees to enter into a new agreement with Lender or its assignee under substantially the same terms as the Agreement if Lender so
  - E. At Seller's request, Buyer agrees to execute and deliver to Lender and Seller such acknowledgment consent as may be required by Lender and in which Buyer acknowledges and confirms that the legal and beneficial ownership of the System remains in Seller, or its affiliate, and that the System is the property of Seller, or its affiliate.
3. Lender's Right to Cure. Regardless of any contrary terms in the Agreement:
  - A. Buyer will not terminate or suspend the Agreement unless Buyer has given the Lender prior written notice of Buyer's intent to terminate or suspend the Agreement describing the event giving rise thereto, including any alleged Seller Default, and provide the Lender with the opportunity to cure any such Seller Default within sixty (60) days after such notice or any longer period provided for in the Agreement. If the Seller Default reasonably cannot be cured by the Lender within the period established under the Agreement, and the Lender commences and continuously pursues the cure of such Seller Default within that period, the period for cure

will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. Seller's and Buyer's respective obligations will otherwise remain in effect during the cure period.

- B. If the Lender or its lawful assignee (including any buyer or transferee) acquires title to or control of Seller's assets and within the applicable time period cures all defaults under the Agreement existing as of the date of such change in control in the manner required by the Agreement and which are capable of cure by a third party, then the Lender or such third party buyer or transferee will no longer be in default under the Agreement, and the Agreement will continue in full force and effect.
- C. At the request of Lender and/or its assignee, Buyer agrees to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue, or terminate the security interest in favor of Lender in all assets of Seller, and to secure the obligations evidenced by the Security Interest.

**SCHEDULE 1**

**Description of System**

**System Site Location:** [\_\_\_\_\_]

**System Size:** [\_\_\_\_\_] kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

**Utility:** [\_\_\_\_\_]

**Retail Service Address:** [Meter Address]

[Utility Account Number]

**Buyer's Allocated Percentage:** [\_\_]%

## **SCHEDULE 2**

### **Termination Fee**

- \* For the purposes of the table Term year 1 shall commence on the Commercial Operation Date
- \*\* The Termination Fee is based on the Buyer's Allocated Percentage at the time of termination. The Termination Fee listed as of the date of this Agreement is based on Buyer's Allocated Percentage on the date of this Agreement.