



POWER PURCHASE AGREEMENT

Between

Abundant Solar Power Inc. (“ASP”)
 (“Seller”)

And

Sample Customer
 (“Customer”),

00/00/0000
 (The “Effective Date”)

ABUNDANT SOLAR POWER INC.

CONTRACT TITLE: POWER PURCHASE AGREEMENT¹

DATE:

CONTRACT PERIOD: Effective Date to 25 Years from the Commercial Operation Date

SERVICE: Electricity Service Provision

BUYER

CONTACT:

BUYER TITLE:

BUYER TEL:

BUYER EMAIL:

SELLER NAME: Abundant Solar Power Inc.

SELLER CONTACT:

SELLER TITLE:

SELLER TEL:

SELLER EMAIL:

Buyer may rescind this agreement within three business days of its receipt without charge or penalty. To rescind this agreement, please call the Seller's toll-free number 1-833-653-6367 or send an email to info@abundantsolarenergy.com.

¹ NOTE: This form is solely for use with a behind the meter, direct power sale for a project located at a site owned by the Buyer.

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EXHIBITS

Exhibit A – Project Specifications

Exhibit B – Outage Protocols, Notices and Metering

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SCHEDULES

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Schedule 2 – Early Termination Fee

Schedule 3 – Contract Price

Schedule 4 – Project Site Description

Schedule 5 – Expected Annual Contract Quantity

Schedule 6 – Project Milestones

This Power Purchase Agreement is dated as of _____ (the “Effective Date”), and is witnessed, acknowledged, and executed by authorized representatives of Abundant Solar Power Inc., a Delaware limited liability company (“Seller”) and _____ (“Buyer”), as evidenced by their signature on the last page of this document.

RECITALS

- A. Buyer wishes to meet its power requirements cost-effectively, efficiently and in an environmentally-friendly manner;
- B. Seller is in the business of developing, designing, constructing, operating and maintaining solar photovoltaic (“PV”) electric generating systems for the purpose of selling power generated by the systems to its buyers;
- C. Buyer has selected Seller to develop, design, construct, own and operate a solar PV generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- D. Buyer desires to purchase electricity generated by the solar PV generating system, pursuant to the terms and conditions set forth herein;
- E. Buyer and Seller desire to enter into this Agreement as an energy performance contract pursuant to Article 9 of the New York Energy Law.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: DEFINITIONS

Unless provided otherwise herein, references in this Agreement to the terms or phrases below have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of this Agreement, the more specific provision shall control.

1.1 “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

1.2 “Agreement” means this Power Purchase Agreement, effective as of the Effective Date, and entered into by and between Buyer and Seller, and all exhibits and schedules (each an “Exhibit” or “Schedule”, as applicable) attached hereto and incorporated herein.

1.3 “Alterations” has the meaning set forth in Section 6.11 herein.

1.4 “Anniversary Date” means the first anniversary of the Commercial Operation Date and that same calendar date for each succeeding Contract Year.

1.5 “Applicable Law” means, with respect to any Person, any federal, state or local law, statute, constitutional provision, rule, regulation, ordinance, treaty, order, writ, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, award, determination, guideline, approval, Local Electric Utility Tariff, consent or requirement of any arbitrator or court or other Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

1.6 “Bankruptcy Event” means with respect to a Party, that either:

(a) such Party has (i) 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; (ii) admitted in writing its inability to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (vi) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (ii) 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 un-stayed and in effect for a period of sixty (60) days.

1.7 “Business Day” means any day other than a Saturday, Sunday, public holidays recognized by New York governmental entities or any other day on which banking institutions in New York are required or authorized by Applicable Law to be closed for business.

1.8 “Budgetary Non-Appropriation Event” has the meaning set forth in Section 15.2 herein.

1.9 “Buyer” has the meaning set forth in the Preamble of this Agreement.

1.10 “Buyer Act” means (i) an act of Buyer to repair the Project Site or the Project Site roof (as the case may be) for any reason not directly related to damage caused by the Facility, and such repair requires the partial or complete temporary disassembly or movement of the Facility, or (ii) any directive, act or omission of Buyer or Buyer’s employees, Affiliates, agents, or subcontractors that results in a disruption or Outage in Facility production.

1.11 “Buyer Address for Billing” means the address to which invoices to the Buyer should be sent, currently:

1.12 “Buyer Address for Notices” means the addresses to which notices to the Buyer should be sent as set forth in Schedule 1 of this Agreement.

1.13 “Buyer Default” – has the meaning set forth in Section 10.3.

1.14 “Buyer Outage” has the meaning set forth in Section 6.9 (a).

1.15 “Buyout Date” has the meaning set forth in Section 2.2 (a).

1.16 “Buyout Payment” has the meaning set forth in Section 2.2.

1.17 “Change in Law” means any circumstance where, after the Effective Date of this Agreement, any Applicable Law is enacted, amended, modified, interpreted, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect. For the avoidance of doubt, Change in Law shall also mean (a) the imposition of and/or increase in the amount of any import tariff or similar charges on the physical equipment to be used in the construction of the Facility, (b) any decision by any Governmental Authority after the Effective Date to either “opt-out” of the RPTL Exemption, or require a payment in lieu of taxes in connection with the Facility or Project Site, and (c) any change to Applicable Law that prevents the Buyer from meeting the requirements of a Customer-Generator under Applicable Law or the Facility from meeting the requirements for net metering or remote net metering, or any equivalent.

1.18 “Collateral Assignment” has the meaning set forth in Section 14.1(a) herein.

1.19 “Commercial Operation Conditions” means with respect to the Facility, that: (i) all Permits have been received necessary for the construction and operation of the Facility; (ii) the Facility has been constructed in accordance with Prudent Industry Practice, all Permits, Applicable Law, the specifications set forth in Exhibit A [Project Specifications] of this Agreement; (iii) Seller has successfully completed the Commissioning Tests, (iv) the applicable Local Electric Utility has approved interconnection for the installation and given its “Permission to Operate Notice”, (v) the Data Acquisition System has been commissioned and is transmitting data, and, (vi) the Facility is capable of generating electricity for sale to the Buyer at the Project Site.

1.20 “Commercial Operation Date” has the meaning set forth in Section 3.5(f) herein.

1.21 “Confidential Information” means all confidential information of a Party, 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 Facility or of a Party’s business.

1.22 “Commissioning Tests” means the tests set forth in Exhibit A [Project Specifications].

1.23 “Contract Price” means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Output, as specified in Schedule 3 to this Agreement.

1.24 “Contract Year” means each year beginning on the Anniversary Date, and ending on the date immediately preceding the subsequent Anniversary Date.

1.25 “Customer-Generator” shall have the meaning assigned to such term in New York Public Service Law § 66-j.

1.26 “Data Acquisition System” or “DAS” means physical devices, data monitoring equipment and apparatus associated with real-time monitoring of the quantities of AC energy generated by the Facility and complying with all requirements of Exhibit B.

1.27 “Daylight Hours” means hours that the inverter would normally be operating.

1.28 “Days” unless otherwise specified, shall mean calendar days.

1.29 “Deemed Generated Energy” means the quantity of Energy, expressed in kWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Delivery Point during each Measurement Period but for reasons caused by a Buyer Act or a refusal by Buyer to accept the Energy, determined by taking into account during the relevant Measurement Period the pyranometers or like devices at the Facility, or if such monitoring equipment is unavailable during a relevant interval, then using available data or interpolated data determined in accordance with Prudent Industry Practice, for clarification purposes and the avoidance of doubt, such “Deemed Generated Energy” shall not include any Energy that would have been produced by the Facility and made available at the Delivery Point during such Measurement Period but was not available for reasons caused by a Seller-caused Outage or any other act of Seller that causes the Energy not to be available, nor shall “Deemed Generated Energy” include any Energy resulting from a Buyer Outage (except for Buyer Outages exceeding five (5) Business Days or 48 Daylight Hours as described in Section 6.9(a)).

1.30 “Degradation” means forecasted deterioration of the Facility calculated on an annual basis due to normal wear and tear and decreasing efficiency causing reductions in power output.

1.31 “Delivered Energy” means the amount of Energy delivered to the Delivery Point by Seller as recorded by Seller’s Meters.

1.32 “Delivery Point” means the metering point at the load side of the transformer for the Facility.

1.33 “Design Phase Requirements” has the meaning set forth in Section 3.4.

1.34 “Dispute” has the meaning set forth in Section 9.1 herein.

1.35 “Disruption Period” means the period of time that a Facility is not able to provide Energy to the Delivery Point arising from a Buyer Act.

1.36 “Distribution System” means the facilities used for the distribution of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.

1.37 “Early Termination Fee” means the fee associated with an early termination of this Agreement as set forth in Schedule 2 of this Agreement [Early Termination Fee].

1.38 “Effective Date” means the date set forth in the Preamble of this Agreement.

1.39 “Energy” means the electricity generated by the Facility pursuant to this Agreement, as expressed in units of kWh.

1.40 “Energy Shortfall” means, for a Measurement Period, that quantity of Energy by which the Expected Annual Contract Quantity exceeds the sum of the Output plus the Lost Output as set forth in Section 4.1(d) herein.

1.41 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from each Facility, and its displacement of conventional energy generation. Environmental Attributes include, but are not limited to: (i) Renewable Energy Credits (RECs) or other certificates, allowances, green tags or transferable indicia 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) of Energy from a renewable energy source by a renewable energy project; (ii) 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; (iii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering Earth’s climate by trapping heat in the atmosphere; and (iv) the reporting rights to any avoided emissions such as Green Tag Reporting Rights.

1.42 “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereunder.

1.43 “Environmental Laws” shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.

1.44 “Event of Default” has the meaning set forth in Section 10.1 herein.

1.45 “Expected Annual Contract Quantity” means the amount of Delivered Energy that Seller expects to deliver from the Facility to Buyer hereunder in a given Contract Year, as set forth in Schedule 5 of this Agreement.

1.46 “Facility” or “PV System” means the generating facility.

1.47 “Fair Market Value” or “FMV” means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry would determine a photovoltaic system to have when negotiated in an arm’s-length, free market transaction 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 and performance of the photovoltaic system and advances in solar technology.

1.48 “Financial Incentives” means (i) the Tax Attributes and (ii) any other financial incentives from the NY SUN PV Incentive Program or Utility that result from the ownership and operation of the Facility or the Output that the Facility has qualified for and/or is eligible for as of the Commercial Operation Date, including solar program incentives and rebates.

1.49 “Financing Party” means any person providing an equity investment (including tax equity), or construction or permanent financing to Seller in connection with the Facility, including any person to whom Seller transferred the ownership interest in the Facility as part of a sale-leaseback, partnership flip or inverted lease transaction.

1.50 “Force Majeure Event” has the meaning set forth in Article 8.

1.51 “Forced Outages” has the meaning set forth in Exhibit B to this Agreement.

1.52 “Full Assignment” has the meaning set forth in Section 14.2.

1.53 “Governmental Authority” means any federal, state, municipal, county, regional or local governmental, administrative, judicial or regulatory entity with jurisdiction over the Facility, the Project Site or Buyer or Seller.

1.54 “Green Tag Reporting Rights” means the rights of a Green Tag purchaser 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 at the Green Tag purchaser’s discretion, and include those 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, with “Green Tag” meaning one (1) MWh of Environmental Attributes.

1.55 “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence,

trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, and by-products.

1.56 “Holidays” for the purposes of this Agreement are New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The dates will be those on which the holidays are legally observed.

1.57 “Initial Term” shall have the meaning set forth in Section 2.1.

1.58 “Indemnified Party” has the meaning set forth in Section 12.1 herein.

1.59 “Indemnifying Party” has the meaning set forth in Section 12.1 herein.

1.60 “Interconnection Agreement” means the agreement between Seller and the Local Electric Utility which sets forth the terms and conditions for Interconnection of the Facility electrical system to the Distribution System, as amended from time to time.

1.61 “Interconnection Upgrades” has the meaning set forth in Section 6.6(b) herein.

1.62 “Interest Rate” means, for any date:

(a) The per annum rate of interest equal to the “Prime Rate” published in The Wall Street Journal under “Money Rates” on such date (or if not published on such date on the most recent preceding day on which published); plus

(b) Two percentage points (2%); provided, in no event may the Interest Rate exceed the maximum interest rate permitted by Applicable Law.

1.63 “Investment Tax Credit” or “ITC” means the federal tax credit associated with the ownership of eligible renewable energy projects as available under Section 48 of the Internal Revenue Code (26 U.S.C. Section 48).

1.64 “Kiosk” means a viewing station for the Buyer and the general public to view the production of Energy from the Facility as described in Section 4.1(c).

1.65 “kW” means one kilowatt of power or nameplate capacity expressed as peak power AC (alternating current).

1.66 “kWh” means one kilowatt of electricity supplied for one hour.

1.67 “Lease” means an agreement by which Seller will lease the Project Site from the Buyer.

1.68 “Lien” has the meaning set forth in Section 16.32.

1.69 “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer and Seller at the Project Site.

1.70 “Local Electric Utility Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of the applicable Local Electric Utility, as these may be amended from time to time.

1.71 “Lost Output” has the meaning set forth in Section 4.1(d).

1.72 “Lost Output Event” has the meaning set forth in Section 4.1(d).

1.73 “Measurement Period” has the meaning set forth in Section 4.1(d).

1.74 “Meter” or “Meters” means the physical metering devices, Data Acquisition Systems and other apparatus associated with the meters owned by Seller and used to determine the quantities of Energy generated by the Facility and to record other related parameters required for the reporting of data to Seller.

1.75 “Metered Energy” means the amount of Energy measured at the Meter for the Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.

1.76 “Monitoring System” has the meaning set forth in Section 4.2 herein.

1.77 “MW” means one megawatt of power or nameplate capacity expressed as peak power AC (alternating current).

1.78 “MWh” means one megawatt of electricity supplied for one hour.

1.79 “NAE Notice” has the meaning set forth in Section 15.3 herein.

1.80 “NPCC” has the meaning set forth in Section 6.8 herein.

1.81 “NTP,” or “Notice to Proceed” means a formal notice issued by Seller to a contractor to proceed with construction of a Facility under an engineering, procurement and construction agreement (or any similar agreement) with a contractor engaged by Seller.

1.82 “NYSERDA” has the meaning set forth in Section 5.3(a) herein.

1.83 “Operations and Maintenance Agreement” or “O&M Agreement” has the meaning set forth in Section 6.2.

1.84 “Outage” means a physical state in which all or a portion of the Facility is unavailable to provide Energy to the Delivery Point.

1.85 “Outside Commercial Operation Date” means the date by which the Facility must achieve Actual Commercial Operation, which shall be on or before, but no later than, four (4) years from the Effective Date, as set forth in Section 3.6 herein and as set forth in Schedule 6 [Project Milestones].

1.86 “Output” means (i) all of the Delivered Energy and Deemed Generated Energy generated by the System following the Commercial Operation Date; and (ii) all Test Energy.

1.87 “Parties” means Buyer and Seller, and each such Party’s respective successors and permitted assignees.

1.88 “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.

1.89 “Permits” means authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the design, development, construction, installation, ownership, operation and maintenance of the Facility.

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

1.91 “<INSERT ELECTRIC UTILITY ACRONYM>” means <INSERT ELECTRIC UTILITY NAME>, who is the applicable Local Electric Utility, as defined herein.

1.92 “Prevailing Wages” means the payment of prevailing rate of wages and supplements as set forth in Article 8 of the New York Labor Law.

1.93 “Property Taxes” has the meaning set forth in Section 5.2(a) herein.

1.94 “Project Milestone(s)” means a defined and significant event that will occur during the process of design, engineering, construction, installation and achieving of commercial operation of the Facility, as identified in Schedule 6 [Project Milestones] to this Agreement.

1.95 “Project Site” means the real property on which the Facility is to be built and located, as described in Schedule 4 to this Agreement [Project Site Description]

1.96 “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of New York in prudent electrical engineering and operations to install and operate solar photovoltaic equipment lawfully and with safety, reliability, efficiency and expediency; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result at a reasonable cost consistent with Applicable Law, safety, reliability, efficiency, and expediency. Prudent Industry Practice is not limited to an optimum practice, method, selection of equipment or act, but rather is intended to include acceptable practices, methods and equipment generally accepted in the state of New York for solar photovoltaic equipment of a type and size similar to the Facility.

1.97 “Purchase Option” has the meaning set forth in Section 2.2 herein.

1.98 “PV” has the meaning set forth in the Recitals of this Agreement.

1.99 “Removal Fund” has the meaning set forth in Section 11.2(a) herein.

1.100 “Renewable Energy Credit” has the meaning defined by the New York Public Service Commission or other applicable Governmental Authority, as may be amended from time to time, or as further defined or supplemented by Applicable Law.

1.101 “Renewal Term” has the meaning set forth in Article 2.1.

1.102 “RPTL Exemption” has the meaning set forth in Section 5.2(d).

1.103 “Security Interest” has the meaning set forth in Section 13.3(f) herein.

1.104 “Seller” has the meaning set forth in the Preamble of this Agreement, and for purposes of the Lease and other rights necessary for Seller to perform its obligations hereunder, the term “Seller” includes Seller’s authorized agents, contractors and subcontractors.

1.105 “Seller Address” means:

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

1.107 “SEQRA” has the meaning set forth in Section 3.3 herein.

1.108 “Solar Insolation” means the amount of solar energy in kWh per square meter falling on a particular location.

1.109 “Substantial Completion” means when (i) installation of all necessary components and systems of a Facility (except for completion of painting, final grading, and similar portions of the construction work not affecting the operability, safety, or mechanical and electrical integrity of the Facility) have been completed; (ii) the Facility is mechanically and electrically sound; and (ii) the Facility is ready for initial operation, adjustment, and testing.

1.110 “Tax Attributes” means the Investment Tax Credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under the Internal Revenue Code or Applicable Law available as a result of the ownership and operation of the Facility or the Output generated by the Facility (including without limitation tax credits, accelerated depreciation, or bonus depreciation).

1.111 “Taxes” has the meaning set forth in Section 5.2(d).

1.112 “Test Energy” has the meaning set forth in Section 4.4.

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

1.114 “Transmission System” means the facilities used for the transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.

1.115 “Utility Electricity Cost” means the cost of electricity provided to Buyer by the Local Electric Utility (per kWh), not including demand or other fixed charges. Such cost shall be

calculated in each calendar year by using the average published utility tariff rate over such calendar year.

ARTICLE 2: TERM

2.1 Term.

(a) The term of this Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the Commercial Operation Date of the Facility (“Initial Term,” and together with any Renewal Terms, the “Term”), unless and until terminated earlier pursuant to the provisions of this Agreement.

(b) After the Initial Term, this Agreement may be renewed for up to two additional five year terms (each a “Renewal Term”) if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the Initial Term, or any Renewal Term, as the case may be, and Seller consents to such renewal, and such renewal is confirmed, as set forth below. For each Renewal Term, the Parties shall confer and agree on a schedule for the Contract Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity. Unless modified by written agreement of the Parties, the remainder of the terms and conditions shall remain substantially the same for each Renewal Term as for the Initial Term. If Seller consents to renewal, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, this Agreement shall expire as of the last day of the Initial Term or the then-current Renewal Term, as applicable. No later than sixty (60) days after Seller provides consent to a Renewal Term, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity for such Renewal Term, Buyer shall confirm to Seller in writing of its intent to proceed with its option for a Renewal Term.

(c) Documentation of any such Renewal Term and changes to Contract Price, Early Termination Fees, and Expected Annual Contract Quantity shall be in the form of an amendment to this Agreement. In the event Buyer does not provide such confirmation, this Agreement shall expire as of the last day of the Initial Term or applicable Renewal Term for the Facility. Upon expiration of the Initial or a Renewal Term, and if Buyer has not exercised its Purchase Option (as defined below), Seller shall cause the Facility to be removed from the Project Site pursuant to Section 11.1. All timelines for action pursuant to this Section 2.1 may be extended by the Parties’ mutual written agreement.

2.2 Buyer’s Exercise of Purchase Option. So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase the Facility (the “Purchase Option”) for a purchase price equal to the FMV (the “Buyout Payment”) at the end of the Initial Term and any Renewal Term. If Buyer chooses to exercise the Purchase Option, the following steps shall be followed by the Parties:

(a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the Facility on a date certain (such date, the "Buyout Date").

(b) For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in Section 2.2(a), the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV as of the Buyout Date. Within sixty (60) days of the selection of such appraiser, s/he shall evaluate and determine the FMV of the Facility as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be borne by Buyer.

(c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall, no later than sixty (60) days from the date of notice referred to in Section 2.2(a), retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry. Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall mutually select a third nationally recognized independent, third-party appraiser with experience in the solar photovoltaic industry, whose services shall be equally paid for by the Parties. Within sixty (60) days of the selection of such third appraiser, the three appraisers shall evaluate and determine the FMV of the Facility and shall submit their reports to both Parties. The appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers' valuations shall be deemed to be the FMV of the Facility. If no such valuation may be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the Facility. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.

(d) No later than sixty (60) days after the determination of the FMV of the Facility, Buyer shall confirm to Seller in writing its intent to proceed with its option to purchase the Facility for the Buyout Payment determined pursuant to this Section 2.2. In the event Buyer does not provide such written confirmation, the provisions of this Agreement shall be applicable as if Buyer had not exercised the Purchase Option.

(e) If Buyer confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (i) cause title and ownership of the Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (ii) to the extent any warranties from any manufacturers of components of the Facility remain applicable and are assignable, assign all such warranties for the Facility to Buyer. The Facility will be sold "as is, where is, with all faults." Buyer shall pay the Buyout Payment to Seller on or about the Buyout Date, in accordance with any previously written instructions delivered to Buyer by Seller for payments under this Agreement. Upon such execution of documents and payment of the Buyout Payment, this Agreement and the Lease shall terminate automatically and Buyer shall own the Facility and to the extent applicable, all Environmental Attributes and remaining unpaid Existing Financial

Incentives relating to the Facility. Upon such purchase, and subject to subsection (g) of this Section below, Buyer will assume complete responsibility for the operation and maintenance of the Facility, and liability for the performance of (and risk of loss for) the Facility, and, except for any Seller obligations that survive termination under Section 11.3, Seller will have no further liabilities or obligations hereunder for the Facility. For the avoidance of doubt, payment of the Buyout Payment shall be in lieu of and instead of any payments described in Article 4 accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with the Buyer to give prompt effect to this transfer.

(f) All other personal property of the Seller not included in the Buyer's purchase shall be removed by Seller from the Project Site within ninety (90) days of the Buyout Date at no cost to Buyer.

(g) Upon Buyer's exercise of the option to purchase the Facility, Buyer shall have the option of either terminating the O&M Agreement (including any required fees), as provided under the terms of the O&M Agreement, or electing to have Seller or Seller's Affiliate continue to provide operations and maintenance services to Buyer under the O&M Agreement notwithstanding the sale of the Facility to Buyer, at a price to be agreed to by the Parties that reflects the fair market value of such services.

2.3 Early Termination.

(a) **Buyer's Rights to Early Termination:** If Seller fails to achieve the Commercial Operation Date by the Outside Commercial Operation Date (as it may be extended pursuant to this Agreement), Buyer may terminate this Agreement without an Early Termination Fee, or any other penalty or liability (except for liabilities that may have accrued prior to such termination) or triggering a default under this Agreement, by providing a written notice to Seller within fifteen (15) days of the event giving rise to the termination, specifying the basis for the termination. Upon receiving such notice, if Seller is able to cure, Seller shall have forty-five (45) days to provide a cure for the circumstance identified by Buyer as the basis for termination. The Seller shall have the option, but not the obligation, to cure. If Buyer terminates this Agreement pursuant to this Section 2.3(a), Seller shall take all actions necessary to return the Project Site to its pre-existing condition in accordance with Section 11.1. Buyer's right to terminate hereunder shall not be subject to the alternative dispute resolution procedures in Section 9.1.

(b) **Seller Rights to Early Termination:** Seller shall have the right to terminate this Agreement, without penalty or liability to the Buyer (except for liabilities that may have accrued prior to such termination) if any of the following conditions occur during the Design Phase described in Section 3.4:

- (i) Seller determines, following an evaluation of the Project Site with respect to geotechnical conditions, environmental conditions, and obstructions, that the Facility cannot be constructed without substantial remediation or a material increase in costs;

- (ii) Seller and Buyer have not executed the Lease, or Buyer has not provided an executed Subordination and Non-Disturbance Agreement, release or acknowledgement from any mortgagee of the land comprising the Project Site, in form and substance acceptable to Seller, to establish the recognition and priority of the Lease, and to disclaim any interest of the mortgagee in the Facility.
- (iii) A Change in Law shall have occurred that could reasonably be expected to adversely affect the economics of the Facility for Seller and its Financing Parties, or that prevents Buyer from meeting the requirements of a Customer-Generator under Applicable Law and the Parties are unable to reach a good faith agreement on adjustments to the Agreement to account for such change in economics as set forth in Section 8.4 herein.
- (iv) Seller has identified adverse claims, restrictions or other conditions (including easements or other liens) on the Buyer's title to the Project Site which may materially adversely affect the financing, development, construction, ownership, operation, or maintenance of the Facility, for which Buyer is unable to obtain a release, waiver or subordination agreement in accordance with the terms of the Lease or there has been a material adverse change in the rights of Buyer and Seller to construct, own, and operate the Facility on the Project Site.
- (v) Seller has not obtained approval from Buyer on the final 100% detailed engineering drawings and specifications for the Facility.
- (vi) Seller has not obtained a financing commitment for construction of the Facility on terms acceptable to Seller, or in the alternative, Seller has not certified in writing that Seller will be self-financing the construction of the Facility and that Seller has sufficient funds to do so, in the form of certification.
- (vii) Seller has not obtained all Permits necessary for the construction and operation of the Facility.
- (viii) Seller has either (A) not obtained from the Local Electric Utility approval of the final reports and/or studies for interconnection of the Facility, and an executed Interconnection Agreement for the Facility that remains in effect as of the NTP, or (B) determined that the costs for any Interconnection Upgrades will cause a material increase in Seller's overall costs for the Facility, and has not obtained from Buyer an adjustment to the Contract Price to reflect such increase in Seller's overall costs as set forth in Section 6.6(c) herein.
- (ix) Seller has not obtained confirmation in writing from the Local Electric Utility that the Facility is eligible for net metering, or remote net metering, as applicable, under the Local Electric Utility Tariffs and Applicable Law,

Including New York Public Service Law Section 66-j.

(c) If Seller wishes to terminate this Agreement as set forth in this Section 2.3(b), Seller shall provide Buyer with a written notice of its intent to terminate the Agreement that sets forth the conditions leading to such termination, and Buyer thereafter shall have a forty-five (45) day period to cure such conditions. If Buyer is unable to cure the condition(s) giving rise to the right to terminate, and the termination rights of this Section 2.3(c) become effective, Seller shall take all actions necessary to return the Buyer's Project Site to its pre-existing condition, as required in Section 11.1.

2.4 Buyer's Additional Rights to Early Termination. Buyer may terminate this Agreement prior to the expiration of the Initial Term or the expiration of any applicable Renewal Term, for any reason upon sixty (60) days' prior written notice. If Buyer terminates prior to the expiration of the Initial Term, Buyer shall pay to Seller the applicable Early Termination Fee set forth in Schedule 2 of this Agreement. However, if Buyer terminates this Agreement for reasons otherwise specified in this Agreement as not requiring payment of the applicable Early Termination Fee, including, but not limited to: (i) termination for Force Majeure (Article 8) or (ii) termination for failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date (as may be extended) (Section 2.3(a)), Buyer shall not be liable to the Seller for the Early Termination Fee. In the event that Buyer terminates this Agreement under this Section 2.4, Seller shall, within one hundred eighty (180) calendar days of such termination, take all actions necessary to return the Project Site to its pre-existing condition in accordance with Section 11.1.

2.5 Decommissioning. If the Buyer does not exercise the options set forth above, then the Seller at its expense shall promptly decommission and remove the Project following the expiration of the Operation Period. The Buyer must grant the Seller reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the project.

ARTICLE 3: DESIGN, ENGINEERING AND CONSTRUCTION REQUIREMENTS

3.1 General Obligations.

(a) In general, Seller shall provide all services necessary to design, engineer, install, construct the Facility, and achieve commercial operations for the Facility. More specifically, Seller must comply with all system design requirements except that Seller may make changes to the design of, and the equipment to be used in, the Facility (including inverters, panels, racking systems, etc.) without the consent of the Borrower as long as (x) any such substituted equipment or component is obtained from "Tier 1" manufacturers or suppliers, as that term is used in Prudent Industry Practice, suitable for the Facility and the Project Site, does not cause the Facility to result in lower electricity production or greater warranty risk and (y) such changes do not (a) materially increase the building footprint, location, weight, height or nameplate capacity of the Facility at the Project Site, (b) materially change the appearance of the Facility, or (c) interfere with Buyer's operations at the Project Site. All other changes in the design of, or equipment used in the Facility shall require Buyer's approval, which shall not be unreasonably withheld, conditioned or delayed.

(b) Seller acknowledges that Buyer is relying upon Seller to proceed with due diligence in developing and constructing the Project, and Seller agrees and covenants that

it shall use commercially reasonable efforts to complete the Design Phase and Construction Phase in a timely manner, and to use commercially reasonable efforts to complete those certain project milestones set forth in Schedule 6 [Project Milestones] (the “Project Milestones”) by the dates set forth in Schedule 6 [Project Milestones], as those dates may be extended by mutual agreement of the Parties. Notwithstanding the foregoing, Seller’s failure to achieve any of the Project Milestones by the dates set forth in Schedule 6 shall not be a basis for the exercise of any early termination rights by Buyer, nor shall it constitute an Event of Default if such failure forms the basis for the exercise of early termination rights by Seller.

3.2 Status Reports. Upon request from Buyer, Seller shall provide status reports on the progress of the Facility to the Buyer from the Effective Date through the Commercial Operation Date, as well as any additional briefing requested by Buyer. Seller shall have no obligation to provide such status updates more frequently than once per calendar [month].

3.3 Permits and Approvals. Seller is responsible for obtaining, at its sole cost and expense, all Permits necessary for the development, design, construction, installation, ownership, operation and maintenance of the Facility, and shall be responsible for securing environmental review under the New York State Environmental Quality Review Act (“SEQRA”) or any other Applicable Law. Buyer shall cooperate with Seller in applying for obtaining and maintaining any such Permits and environmental reviews, and for providing information in Buyer’s possession concerning the Project Site. Upon Buyer’s request, Seller shall provide Buyer with copies of all applications made to, and Permits received from, Governmental Authorities that are necessary for the development, design, construction, installation, ownership, operation and maintenance of the Facility.

3.4 Design Phase.

The Design Phase shall run from the Effective Date through the NTP. During this Design Phase, Seller shall proceed with all activities necessary to allow for commencement of the construction phase. Upon completion of the Design Phase Requirements, Seller shall proceed with the Construction Phase described in Section 3.5. The “Design Phase Requirements” are as follows:

(a) Seller must submit 65% and final 100% detailed engineering drawings (including any drawings used for purposes of seeking site plan or other approval from applicable Governmental Authorities) and specifications for the Facility to Buyer for approval. Seller shall obtain approval from Buyer, which shall not be unreasonably withheld, conditioned or delayed, on the final 100% detailed engineering drawings and specifications for the Facility.

(b) Seller shall obtain a financing commitment for construction of the Facility on terms acceptable to Seller, or in the alternative, Seller may determine in its sole discretion to self-finance the construction of the Facility and shall certify in writing as such in the form of certification.

(c) Seller shall apply for and obtain all Permits necessary for the construction and operation of the Facility.

(d) Seller shall apply for and obtain from the Local Electric Utility approval of the final reports and/or studies for interconnection of the Facility, and an executed Interconnection Agreement for the Facility.

(e) Seller shall seek and obtain confirmation in writing from the Local Electric Utility that the Facility is eligible for net metering, or remote net metering, as applicable, under the Local Electric Utility Tariffs and Applicable Law, including New York Public Service Law Section 66-j.

(f) The Seller shall comply with the insurance requirements for the Design Phase included as Exhibit C (Insurance Requirements). Seller shall maintain such coverage throughout this phase. Each Party, upon request, shall furnish current certificates evidencing that the insurance coverage required in Exhibit C is being maintained.

3.5 Construction Phase.

The Construction Phase shall run from the NTP through the Commercial Operation Date. During this Construction Phase, Seller shall proceed with all activities necessary to construct the Facility and achieve commercial operation and shall comply with the following requirements:

(a) The Seller must comply with the insurance requirements for the construction phase included as Exhibit C (Insurance Requirements). Seller shall maintain such coverage throughout this phase.

(b) Seller will cause the Facility to be installed and constructed substantially in accordance with Exhibit A [Project Specifications] of this Agreement (as may be modified during the Design Phase pursuant to Section 3.1) and Applicable Law, including but not limited to, any requirements imposed by Buyer or any other federal, state or local Governmental Authority to ensure that minority and women business enterprises are afforded a full opportunity to perform work in connection with this Agreement, if applicable. Seller shall assume that the payment of Prevailing Wages is required in connection with the construction and installation of the Facility. All construction of the Facility, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller, its contractors and subcontractors, or by independent contractors duly licensed under the laws of the State of New York, each with demonstrated competence and experience in the construction of solar photovoltaic systems, and pursuant to written contracts with such contractors and subcontractors. Buyer shall have the right, but not the obligation, to inspect all construction solely for the purpose of confirming that Seller is adhering to the plans provided in accordance with Exhibit A (as may be modified during the Design Phase pursuant to Section 3.1), provided that Buyer's inspections are done upon reasonable advance written notice at a reasonable frequency and during reasonable dates and times. Buyer shall comply with all of Seller's safety rules during all such inspections.

(c) Seller must comply with all requirements set forth in applicable building and electrical codes and all applicable Permits.

(d) Seller shall provide Buyer with two (2) sets of as-built plans for the Facility after completion of the Construction Phase.

(e) Seller shall notify Buyer when Substantial Completion of the Facility is achieved. At the discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection of the Facility after Substantial Completion to confirm the Facility has been built in compliance with the plans and specifications set forth in Exhibit A (as may be modified during the Design Phase pursuant to Section 3.1). The inspection shall be scheduled for a date, mutually agreeable to Seller and Buyer, which is within ten (10) Business Days of Seller's notification of Substantial Completion of the Facility. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Seller is responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to document actions taken in response to the punch list items. If requested by Buyer, Seller shall schedule and arrange a follow-up inspection for Buyer after all punch list items are resolved. All punch list items shall be resolved prior to the Commercial Operation Date of the Facility except those items specifically excepted by mutual agreement between Buyer and Seller.

(f) Seller shall conduct the Commissioning Tests in accordance with Prudent Industry Practice and all applicable Local Electric Utility requirements for pre-operational testing. In addition, no later than fourteen (14) days prior to conducting its Commissioning Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Buyer has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days' notice of the date of such tests. If the results of such testing indicate that the Facility is capable of generating Energy for at least four (4) consecutive hours, using such instruments and meters as have been installed for such purposes, and the other Commercial Operation Conditions have been satisfied, then Seller shall send a written notice to Buyer to that effect. The date of such written notice shall be the "Commercial Operation Date."

3.6 Seller shall complete the requirements of the Construction Phase and achieve the Commercial Operation Date on or before, but no later than, the Outside Commercial Operation Date, provided, however, that such date may be extended as may be reasonably necessary due to a Force Majeure Event or by mutual agreement of the Parties.

ARTICLE 4: OPERATIONS PHASE: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase and Sale of the Output.

(a) Commencing on the Commercial Operation Date (or before such date in the case of Test Energy) and continuing throughout the Term, subject to this Article 4, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for, the Output as set forth in this Section. For the avoidance

of doubt and for clarification purposes only, Buyer shall be under no obligation to pay for Energy that would have been generated and delivered at the Delivery Point, but which was not so generated or delivered due to a Seller-caused Outage or an Outage resulting from a Lost Output Event.

(b) The pricing for Output under this Agreement after the Commercial Operation Date shall be the Contract Price for the current Contract Year. The invoice for Output for each applicable monthly billing period after the Commercial Operation Date shall be determined as follows:

Payment to Seller for Output over the billing period (P) = EE x EP

Where:

EE = the total kWh of Delivered Energy and Deemed Generated Energy during the billing period.

EP = the Contract Price as per Schedule 3 to this Agreement [Contract Price].

(c) Meters

- (i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric Utility Tariffs and the Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least every two (2) years. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better, as measured by Seller's DAS or other performance monitoring and reporting service, which shall be viewable by Buyer at all times.
- (ii) [Single Viewing Kiosk for the Facility]. At the location of Buyer's choice, Seller will install a single Kiosk for viewing by the general public consisting of a 20" LCD screen with a computer and keyboard sufficient to view the Data Acquisition System monitoring of the Facility. The computer and keyboard shall be housed in a cabinet whose design, aesthetics, and cost are mutually agreed upon by Buyer and Seller. Buyer will allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet. Seller's total installed cost of the Kiosk shall not exceed \$5,000 US dollars. Following installation, Buyer shall

provide and maintain communications equipment and services to the Kiosk].²

- (iii) Communications Equipment. After the Commercial Operation Date, Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters.
- (iv) Meter Updates. Seller shall at its sole cost and expense, install any updates or upgrades to the Meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Upon reasonable notice to Seller, as provided for in the Lease, Seller shall permit Buyer or Buyer's representative access to the Facility for the purpose of verifying the Meters.

(d) Delivery Obligation. Beginning on the second anniversary of the Commercial Operation Date for the Facility, the Facility's Output shall equal not less than 90% of the applicable Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) during the Initial Term or applicable Renewal Term, if any, measured on a rolling two (2) year, cumulative basis (the "Measurement Period"), unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity arises from (i) Facility failure, damage or downtime attributable to third parties, (ii) curtailment or other directives of the Local Electric Utility or independent system operator, general utility outages or any failure of any Distribution System, or (iii) a Force Majeure Event (such Output losses arising from the causes described in (i) through (iii) above during any Measurement Period, are "Lost Output" and each a "Lost Output Event"). Subject to the terms and conditions of this Agreement, beginning on the fourth anniversary of the Commercial Operation Date, if the sum of the Output plus all Lost Output for the two (2) year period prior to such anniversary does not equal or exceed the Expected Annual Contract Quantity for such two (2) year period (an "Energy Shortfall"), Seller will credit Buyer on its next invoice an amount equal to the product of (i) the Buyer's average Utility Electricity Cost for the Measurement Period minus (b) the Contract Price for each year of the Measurement Period, and (ii) the amount of the Energy Shortfall. The Parties recognize and agree that (A) with the exception of an event of default, payment of amounts by Seller to Buyer pursuant to this Section is an appropriate remedy, and (B) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

4.2 Monitoring System and Web Interface.

(a) Seller shall install, maintain, control, and operate a monitoring system for the Facility meeting the following requirements (the "Monitoring System"):

² NTD: Whether this is necessary should be decided on a case-by-case basis. For example, a kiosk may not have a lot of value to the public for a rooftop system at a wastewater treatment plant.

- (i) The Monitoring System shall include, without limitation, ability to monitor revenue grade AC production data; weather data, (including ambient temperature and wind speed); and shall include a pyranometer.
- (ii) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, and greenhouse gas emissions reduced.
- (iii) The Monitoring System shall meet or exceed all applicable Local Electric Utility monitoring and reporting standards.
- (iv) Additional requirements and specifications for monitoring are described in Exhibit B [Operations Forecasts, Scheduling Protocols, & Monitoring.]

4.3 Delivery Point. Except as expressly set forth in this Agreement, Seller is responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer is responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.4 Test Energy. Prior to the Commercial Operation Date, Buyer shall purchase all Energy that is generated by Seller during the testing and commissioning of the Facility and which Buyer shall either use at the Project Site or for which Buyer shall receive net metering credits (the "Test Energy"). Purchase and sale of Test Energy shall not indicate that the Facility has been put in commercial operation. Buyer shall pay for all Test Energy at the rate specified in Schedule 3 during the first contract year.

ARTICLE 5: BILLING AND PAYMENT; TAXES

5.1 Billing and Payment.

(a) During the Term on a monthly basis, Seller shall invoice Buyer, and Buyer shall make payment for Output in accordance with Article 4. Such payment is full compensation to Seller for Output under this Agreement. Invoices furnished by Seller under this Agreement must be in a form agreed upon by the Buyer and Seller, and must include a unique invoice number.

(b) All payments shall be made on or before net thirty (30) days, excluding Holidays, after receipt of an invoice. Each Party shall make payments by electronic funds transfer, if available, or by other mutually agreeable method(s), to the account designated by the other Party.

(c) All payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set off, or adjustment of any kind.

(d) If a dispute arises with respect to any invoice, Buyer shall pay the undisputed portion of the invoice and state, in writing, the basis for the dispute. The Buyer shall not be deemed in default under this Agreement for withholding payment for any disputed portion of the invoice, and the Parties shall not suspend the performance of their respective obligations hereunder. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount in dispute from the date becoming past due under such invoice until the date paid.

5.2 Allocation of Taxes.

(a) The Parties acknowledge that Buyer, as a municipal corporation of New York State, or not-for-profit organization validly organized under New York State law, is exempt from the assessment of, and obligation to pay real property taxes, ad valorem levies or special assessments (“Property Taxes”) for property owned by such municipal corporation or not-for-profit corporation and used for public or not-for-profit purposes, respectively. To the extent that the installation of the Facility on the Project Site results in any Property Taxes being assessed against the Project Site or the Facility, or the requirement of payments in lieu of real property taxes to one or more taxing jurisdictions or other authority in accordance with a payment in lieu of taxes agreement, Seller shall solely be responsible for the payment of all such Taxes, whether as a direct payment to the relevant taxing jurisdiction(s) or as a reimbursement to Buyer. If Seller fails to pay such Taxes, then, in addition to the Buyer’s other rights and remedies, the Buyer shall have the right to pay such Taxes, and Seller shall indemnify and reimburse Buyer for the cost thereof within thirty (30) days of such payment.

(b) To the extent any Taxes (other than Property Taxes) are assessed on the generation, sale, delivery or consumption of Energy produced by the Facility, (ii) the interconnection of the Facility to the Local Electric Utility’s electric distribution system, or (iii) the issuance or granting by the Local Electric Utility of net metering credits, Buyer shall either pay or reimburse Seller for any and all such Taxes; provided, however, Buyer will not be required to pay or reimburse Seller for any such Taxes assessed on the generation, sale, delivery or consumption of Energy produced by the Facility or the interconnection of the Facility to the Local Electric Utility’s electric distribution system during periods when Seller fails to deliver Energy to Buyer due to the action or omission of Seller.

(c) Either Party has the right to contest Taxes in accordance with Applicable Law. The other Party shall use all reasonable efforts to cooperate with the contesting Party in any such contests of tax assessments or payments. In no event shall the contesting Party postpone during the pendency of an appeal of a tax assessment the payment of Taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(d) The Parties acknowledge that, as of the Effective Date, the Governmental Authorities with taxing authority at the Project Site have not “opted out” of the exemption from taxation of solar or wind energy systems pursuant to N.Y. Real Property Tax Law

Section 487 (“RPTL Exemption”). In the event that any taxing jurisdiction opts out of the RPTL Exemption or requires the Buyer or Seller to enter into a payment in lieu of tax agreement, such event will be treated as a “Change in Law” pursuant to Section 8.4 hereof.

(e) For purposes of this section, “Taxes” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of Energy under this Agreement, which shall be Seller’s sole responsibility.

(f) Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay Taxes for which it is exempt under Applicable Law.

5.3 Environmental Attributes.

(a) The Parties expect that either the New York State Energy Research and Development Authority (“NYSERDA”), pursuant to the NY SUN PV Incentive Program, or the Local Electric Utility shall be the owner of the Environmental Attributes pursuant to the Local Electric Utility Tariffs.

(b) In the event that NYSERDA is not the owner of the Environmental Attributes, and Buyer wishes to opt-out of receiving compensation from the Local Electric Utility for the Environmental Attributes and become the owner of the Environmental Attributes, it shall provide notice of such intent to Seller, and Seller and Buyer will cooperate to cause the Local Electric Utility to relinquish its claim to such Environmental Attributes.

(c) Notwithstanding anything in this Agreement to the contrary, Buyer’s election, if any, to receive the Environmental Attributes in lieu of compensation for such Environmental Attributes from the Local Electric Utility shall not require Seller to reduce the Contract Price in any year of this Agreement.

5.4 Tax Credits and Financial Incentives.

(a) Seller shall be the owner of any Tax Attributes that may arise as result of the construction and operation of the Facility and shall be entitled to transfer such Tax Attributes to any Person. Buyer agrees to provide Seller information and documentation in support of Seller’s rights and interests in the Tax Attributes. Seller acknowledges that, except for such statements, representations and warranties expressly set forth herein, Buyer has made no statements, representations or warranties regarding the eligibility of the Facility for such Tax Attributes and Seller is not relying on any statement, representation or warranty by Buyer or any third party with respect to such Tax Attributes in entering into this Agreement.

(b) Prior to the Commercial Operation Date of the Facility, Seller shall complete the applications for any applicable solar program providing for performance-based incentives, including but not limited to the NY SUN PV Incentive Program, submit

all paperwork to NYSERDA or other appropriate Governmental Authority on the Buyer's behalf, and take all other actions necessary to obtain the available incentives for the Buyer.

(c) Seller shall receive all Financial Incentives during the Term of this Agreement. In connection with Seller's rights and interests in Financial Incentive payments to be made after the Commercial Operation Date, Buyer agrees to cooperate with Seller, including signing authorizations needed by Seller, to obtain any such Financial Incentives.

ARTICLE 6: SELLER'S ADDITIONAL OBLIGATIONS

6.1 Lease. Seller shall enter into a lease agreement with the Buyer and comply with its terms.

6.2 Facility Ownership. The Facility will be owned by Seller, its successors and permitted assigns, or its Financing Parties. Seller shall develop, finance, own, and maintain the Facility in accordance with this Agreement, including the technical requirements set forth in Exhibits A [Project Specifications] and in accordance with all access rights to the Project Site(s), all Applicable Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit A [Project Specifications] for the equipment detailed therein. Pursuant to a separate Operations and Maintenance Agreement between Seller (or its Affiliate) and Buyer ("O&M Agreement"), Seller shall also be responsible for all operation and maintenance of the Facility.

6.3 Compliance. Seller shall, in its own name and at its own expense, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Applicable Law, the Local Electric Utility Tariffs or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by this Agreement.

6.4 Maintenance and Inspection of Records.

(a) Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and any lease or license relating to the Facility, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Buyer for a minimum period of five (5) years, or for any longer period required by Applicable Law, from the date of final payment to Seller pursuant to this Agreement.

(b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.

6.5 Insurance.

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit C [Insurance Requirements] for the term of this Agreement.

6.6 Obligation to Interconnect and for Net Metering.

(a) Seller shall be responsible for the interconnection of the Facility to the Project Site electrical system and shall be solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Buyer shall at all times own and be responsible for the operation and maintenance of the Project Site electrical system at and from the Delivery Point.

(b) Seller, with Buyer's assistance, shall, at Seller's own cost and expense, arrange for the execution of such agreements, including Interconnection Agreements, as may be required by the Local Electric Utility to permit the interconnection of the Facility with the Project Site electrical system, and net metering arrangements to allow any Output of the Facility not consumed by the Project Site to flow to the Local Electric Utility and for Buyer to retain any credits or payments from the Local Electric Utility that may be available under net metering or remote net metering (as applicable), or similar programs under Local Electric Utility Tariffs and Applicable Law, including New York Public Service Law Section 66-j. Seller shall promptly provide copies of such agreements and arrangements to Buyer when executed, or for execution by Buyer, if applicable. The Parties will work cooperatively and in good faith to meet all Applicable Law relating to net metering, and to maintain Buyer's designation with the Local Electric Utility as a Customer-Generator. Seller shall be responsible for all costs under any Interconnection Agreement and any other agreements with the Local Electric Utility including but not limited to the costs of any required upgrades to the Distribution System associated with the interconnection of the Project Site electrical system (the "Interconnection Upgrades").

(c) In the event that the Seller must incur costs in connection with Interconnection Upgrades, Seller will promptly provide Buyer with written notice setting forth (i) the costs of such Interconnection Upgrades and the manner in which such Interconnection Upgrades materially increases Seller's overall costs beyond those Interconnection Upgrades costs assumed and accounted for in Seller's proposal to Buyer; and (ii) Seller's proposed adjustment to the Contract Price to reflect such material increase in overall costs, if any. Within thirty (30) days following Buyer's receipt of such notice from Seller, the Parties shall meet and negotiate in good faith for adjustments to the Contract Price set forth in Schedule 3 as are reasonably necessary to preserve the economic value of the Agreement to both Parties. In the event that the Parties are unable to reach an agreement on adjustments to the Contract Price, Seller may terminate this Agreement upon written notice delivered to the Buyer no later than ten (10) days after the expiration of such thirty (30) day period in accordance with this Section 6.6 without incurring an Early

Termination Fee or any other liability for costs or damages or triggering a default under this Agreement.

6.7 Facility Conformance to Specifications. Seller shall assure that the Facility remains in conformance with the most recent version of the as-built drawings provided to the Buyer and all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. After the Commercial Operation Date, Seller has the right to modify the design of the Facility subject to the Buyer's approval, not to be unreasonably conditioned, delayed, or withheld. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between the Facility and the most recent version of the as-built drawings received by the Buyer, or any specification or requirement of this Agreement (as may be amended). Within twenty (20) Days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer, which consent shall not be unreasonably withheld or delayed.

6.8 Coordination with Local Electric Utility and Northeast Power Coordinating Council ("NPCC").

(a) Local Electric Utility and NPCC Standards. Seller shall comply, with Buyer's cooperation to the extent necessary or required, with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the Local Electric Utility; (ii) NPCC scheduling practices; and (iii) Prudent Industry Practice.

(b) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit B [Operations Forecasts, Scheduling Protocols, & Monitoring].

6.9 Outages. Seller and Buyer shall use commercially reasonable efforts to minimize the number and duration of planned Outages during periods when the Facility otherwise would be able to produce Energy. Planned and forced Outages shall be coordinated between Seller and Buyer in accordance with Exhibit B [Operations Forecasts, Scheduling Protocols, & Monitoring]. Seller is responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling (except for any such expenses and costs associated with any Outages relating to any Buyer Acts). Seller's planned Outages shall be limited to no more than fifteen (15) Business Days per Contract Year. For the avoidance of doubt and for clarification purposes, Buyer is under no obligation to pay for Energy that would have been generated and delivered at the Delivery Point, but which was not so generated or delivered due to a Seller-caused Outage or an Outage resulting from a Lost Output Event.

(a) Buyer Act Outages. Buyer may direct that the Facility be offline for a total of forty-eight (48) Daylight Hours per Contract Year during the Term, during which hours Buyer shall not be obligated to accept or pay for Output from the Facility ("Buyer Outage"). If Buyer Outages exceed a total of five (5) Business Days or forty-eight (48) Daylight Hours, whichever is longer, per Contract Year, Seller shall estimate the Deemed Generated Energy for such planned Buyer Outages, plus the amount of any Tax Attributes either not

earned or recaptured by a Governmental Authority as a result of such planned Buyer Outages, and invoice Buyer for such amount. In the event that a Buyer Act results in a Disruption Period that is greater than thirty (30) calendar days in any Contract Year, or more than ninety (90) days in the aggregate during the Initial Term or any Renewal Term when added to all prior Disruption Periods, then Seller, at its option, shall be entitled to declare a Buyer's Default under this Agreement and pursue the remedies available to the Seller under Article 10 of the Agreement. For the purpose of calculating estimated Energy and lost revenue for such Disruption Periods, Energy shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the Disruption Period occurs within the first twelve (12) months of operation, the average over such period of operation).

6.10 Transmission and Distribution Maintenance Information. If either Party receives information from the Local Electric Utility regarding maintenance that will directly affect the Facility, it will provide the information promptly to the other Party.

6.11 Modifications to the Facility After the Commercial Operation Date. After the Commercial Operation Date of a Facility, Seller shall have no right to make material changes or alterations to the Facility (collectively "Alterations") without receiving prior written approval of Buyer. Seller shall submit to Buyer detailed and complete plans for the proposed Alterations. To the extent any change, replacement or alteration consists solely of modification or replacement of like kind equipment it shall not be deemed to be an Alteration. Buyer shall not unreasonably delay, condition or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the Alterations, Buyer may impose reasonable requirements, including the reimbursement of any reasonable costs incurred by Buyer in responding to Seller's request or inspecting such Alterations. All reimbursed costs must be presented to Seller in advance and must be approved by Seller. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Law, including any and all necessary Permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller's routine repair, replacement, or maintenance of the equipment components of the Facility shall not require Buyer's consent or notice to Buyer and shall be governed by the terms of the O&M Agreement.

6.12 Facility Security. Seller shall be responsible for taking reasonable steps to maintain the security of the Facility in accordance with Prudent Industry Practice for the type of Facility (i.e., rooftop versus ground-mount).

ARTICLE 7: BUYER'S OBLIGATIONS

7.1 Facility Operation. During the Term, and for purposes of New York Public Service Law Section 66-j, Buyer shall be deemed and considered the operator of the Facility, but in consideration of the payments made under this Agreement and as described in the O&M Agreement, Seller (or its Affiliate) exclusively shall perform all services required to operate and maintain the Facility on Buyer's behalf during the Term. As further described in the O&M Agreement, Seller (or its Affiliate) will operate and perform all routine and emergency repairs to,

and maintenance of, the Facility at its sole cost and expense, except for any repairs or maintenance resulting from Buyer's negligence, willful misconduct or breach of this Agreement. Buyer shall be responsible for any work done by Buyer or its Affiliates, representatives, agents, or employees on any part of the Facility unless Seller (or its Affiliate) authorizes that work in advance in writing. If the Facility requires repairs for which Buyer is responsible, Buyer shall pay Seller (or its Affiliate) for diagnosing and correcting the problem at Seller (or its Affiliate) or their contractors' then-current standard rates, plus the costs of any materials or subcontracted labor or services.

72 Lease. Buyer shall enter into the Lease, and comply with its terms.

73 Site Security. Subject to and in accordance with all relevant provisions of the Lease, Buyer shall be responsible for using commercially reasonable efforts to maintain the physical security of any portion of the Project Site not comprising the Facility against any known risks or risks that should have been known by Buyer, but Buyer shall not be responsible for the physical security of the Facility itself, or any fenced or enclosed area comprising the Facility, nor responsible for any damage to or loss of use of the Facility unless such damage or loss is caused directly by Buyer or Buyer's managers, employees, agents, contractors or consultants.

74 Notice of Damage or Emergency. Buyer shall (i) promptly notify Seller if it becomes aware of any damage to or loss of the use of the Facility that could reasonably be expected to adversely affect the Facility; (ii) immediately notify Seller if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the Facility or the Project Site in connection with this Agreement, but failure to so notify Seller shall not cause Buyer to incur any liability for any damage to or loss of use of the Facility or any other liability absent a finding of gross negligence or willful misconduct on the part of the Buyer.

75 Interference with System. Buyer hereby covenants that neither Buyer nor its managers, employees, agents, contractors or consultants will interfere with or handle any Seller equipment or the Facility without written authorization from Seller; and Buyer will not conduct activities on, in or about the Project Site that have a reasonable likelihood of causing damage, impairment (including any impairment of the Solar Insolation received by the Facility), or otherwise adversely affecting the Facility.

ARTICLE 8: FORCE MAJEURE AND CHANGE IN LAW

8.1 Force Majeure Events.

(a) Subject to Section 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement or liable for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output, but excluding any failure to pay amounts due hereunder) if such delay or failure is due to a Force Majeure Event. "Force Majeure Event" means an event or circumstance that:

(i) was not anticipated on the Effective Date.

- (ii) is not attributable to the fault or negligence or action or inaction on the part of that Party;
 - (iii) is caused by factors beyond that Party's reasonable control; and
 - (iv) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.
- (b) Subject to this Article 8, a "Force Majeure Event" may include, but is not limited to:
- (i) acts of nature such as storms, floods, lightning, and earthquakes;
 - (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement and such sabotage or destruction was not the result of Seller's failure to properly secure the Facility in accordance with Section 6.12 herein and the Lease;
 - (iii) Transmission System or Distribution System outage or failure not caused by Seller or Seller activities or failure to act;
 - (iv) war, riot, acts of a public enemy or other civil disturbance;
 - (v) strike, walkout, lockout or other significant labor dispute;
 - (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves;
 - (vii) failures or delays by the Local Electric Utility in entering into, or performing under, all agreements contemplated by this Agreement;
 - (viii) failures or unreasonable delays by Governmental Authorities in issuing Permits or entering into agreements contemplated by this Agreement, provided that Seller made all commercially reasonable efforts to timely request and diligently pursue such Permits or agreements, and such failure or delay was not the result of Seller or Seller activities or failure to act;
 - (ix) a Budgetary Non-Appropriation Event (as defined in Article 15 below);
 - (x) the full or partial curtailment of the Output of the Facility ordered by the Local Electric Utility or the New York Independent System Operator (or their successors); and

- (xi) failure of equipment not owned or controlled by either Party.
- (c) Exclusion. “Force Majeure Event” does not include the following:
 - (i) economic hardship of either Party;
 - (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Section 8.1;
 - (iii) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event.

8.2 Conditions.

(a) In addition to the conditions set forth in Section 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

- (i) provides prompt written notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
- (ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- (iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;
- (iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and
- (v) provides prompt written notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance, and resumes performance of its obligations hereunder as soon as practicable thereafter.

8.3 Termination Due To Force Majeure Event.

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of one hundred eighty (180) consecutive days or more (whether full or partial days) due to a Force Majeure Event, the other Party may terminate this Agreement, without any Early Termination Fee

or other liability of either Party to the other (except for such liabilities incurred prior to the Force Majeure Event), upon thirty (30) days written notice after the Force Majeure Event. In the event that the Facility is unable to function for a period of one hundred eighty (180) consecutive days and this Agreement as it relates to the Facility is terminated by one of the Parties, Seller shall be responsible, at its cost and expense, for removing the Facility and restoring the Project Site in accordance with Section 11.1 within ninety (90) days after provision of written notice. The Parties agree to work in good faith to keep the other Party informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in the Facility being unable to function for a period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Buyer with a plan to restore the Facility. For avoidance of doubt, Seller termination for a Force Majeure Event under Section 8.1(b)(ix) (Budgetary Non-Appropriation Event) shall be in accordance with the timeframes set forth in this Section 8.3.

8.4 Change In Law.

(a) In the event there is a Change in Law that is applicable to the operation of the Facility, the sale of Energy produced by the Facility, or any other obligation of the Seller hereunder, and compliance with the Change in Law results in a material increase in Seller's costs to operate and/or maintain the Facility, Seller will promptly provide Buyer with written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law materially increases Seller's overall costs; and (iii) Seller's proposed adjustment to the Contract Price to reflect such material increase in overall costs. Within thirty (30) days following Buyer's receipt of such notice from Seller, and subject to verification of the change in Applicable Law and receipt of the computations regarding the cost of complying with such change and the material increase to Seller's overall costs, the Parties shall meet and negotiate in good faith for adjustments to the Contract Price set forth in Schedule 3 as are reasonably necessary to preserve the economic value of the Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then either Party shall have the right to terminate this Agreement without further liability to the other Party except with respect to payment of amounts accrued prior to termination.

(b) If there is a Change in Law that materially and adversely affects the Buyer from meeting the requirements of a Customer-Generator under Applicable Law or the Facility from meeting the requirements for net metering or remote net metering, or any equivalent, under Applicable Law, then the Parties shall meet and negotiate in good faith for adjustments to this Agreement as are reasonably necessary to preserve the economic value of the Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then either Party shall have the right to terminate this Agreement without further liability to the other Party except with respect to payment of amounts accrued prior to termination.

(c) If there is a termination under this Section 8.4, Seller shall restore the Project Site to its pre-existing condition in accordance with Section 11.1 herein.

ARTICLE 9: DISPUTE RESOLUTION

91 The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party. Except to the extent that this Agreement expressly permits a Party to suspend performance pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with the performance of their respective obligations under this Agreement during the pendency of the Dispute. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator mutually agreeable to the parties whom they choose together, and share costs for such equally.

92 Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy or otherwise negate the requirements of Applicable Law.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Events of Default Generally.

The following is a list of non-exclusive events of default (each, an “Event of Default,” and collectively “Events of Default”). They shall constitute a Seller’s default or Buyer’s default as specified below and are in addition to those Events of Default specified in Sections 10.2 and 10.3:

- (a) Either Party fails to maintain any insurance required pursuant to this Agreement, and such failure is not cured within five (5) business days after notice by the other Party; or
- (b) A Bankruptcy Event shall have occurred as to either Party;
- (c) The sequestration or attachment of or execution or other levy by a Governmental Authority on a Party’s interest in this Agreement or the Project Site or any improvements located thereon shall have occurred and such Party shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (d) The occurrence of any act or omission on the part of a Party which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for a Party to lawfully conduct the operations which a Party is required or permitted to conduct on the Project Site and the defaulting Party (A) fails to cure such breach within thirty (30) days after the non-defaulting Party’s written notice or (B) fails to commence and in good faith continuously pursue a cure within such thirty (30) day period if a longer cure period is needed.

10.2 Seller Defaults and Buyer Remedies.

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

- (i) Seller fails to achieve the Commercial Operation Date by the Outside Commercial Date and the Outside Commercial Operation Date is not extended as a result of a Force Majeure Event or by mutual agreement of the Parties;
- (ii) After achieving the Commercial Operation Date, Seller ceases to operate the Facility for a period of longer than ninety (90) consecutive days, which failure is not due to a Force Majeure Event or Buyer Act, and Seller fails to resume operation within thirty (30) days after receipt of notice from Buyer stating that, in Buyer’s reasonable determination, Seller has ceased operation of the Facility;
- (iii) Seller fails to pay Buyer any undisputed amount owed under this Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount;
- (iv) Seller breaches any material term of this Agreement, the Lease, or the O&M Agreement, and (A) if such breach can be cured within thirty (30) days after Buyer’s written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and in good faith continuously pursue a cure within such thirty (30) day period if a longer cure period is needed;
- (v) Seller delivers to Buyer, without Buyer’s consent, Energy or other product from a resource other than the Facility specified in this Agreement;
- (vi) If, for twelve (12) consecutive months, the Facility’s Output does not meet seventy percent (70%) of the Expected Annual Contract Quantity for such twelve-month period as specified in Schedule 7 of this Agreement after adjustments for weather and Lost Output Events;
- (vii) Seller sells or transfers Output to any Person other than Buyer, except as may be permitted herein;
- (viii) A mechanic’s lien is filed against the Project Site because of any act or omission of Seller that has not been discharged, bonded or contested by the Seller in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice; or
- (ix) Any material representation or warranty made by Seller hereunder is false or misleading in any material respect and such misrepresentation is not cured within ten (10) business days from

the earlier of (a) written notice from the Party affected by the misrepresentation and (b) the actual discovery or determination by any responsible personnel of a Party of its misrepresentation; provided, that if the Party that has made the misrepresentation commences an action to cure such misrepresentation within such ten (10) business day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days after the expiration of the initial ten (10) business day period.

(b) Buyer's Remedies. If a Seller Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to each Financing Party – the identity of which Seller will have provided to Buyer, and such Seller Default has not been cured within sixty (60) days of delivery of such notice to the Financing Party or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Buyer within such sixty (60) day period if a longer cure period is needed. Any Financing Party is an intended third-party beneficiary of this Article 10. Upon Buyer's exercise of termination rights pursuant to this subsection, Buyer may, at its option, provide written notice to Seller to remove the Facility from the Project Site. If Buyer makes such election, Seller shall be responsible for removing the Facility at its own cost and restoring the Project Site in accordance with Section 11.1, within 180 days of provision of written notice.

(c) No Early Termination Fee. Buyer's exercise of its rights under this Section 10.2 will not obligate it to pay an Early Termination Fee.

10.3 Buyer Defaults and Seller Remedies.

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

- (i) Buyer fails to pay Seller any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Seller of such past due amount;
- (ii) Buyer breaches any material term of this Agreement, the Lease, or the O&M Agreement, if (A) 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 in good faith continuously pursue said cure within such thirty (30) day period if a longer cure period is needed;

- (iii) Buyer's modification or change in use of the Project Site that will or would reasonably be expected to materially impact the Output of the Facility without Seller's prior written consent;
- (iv) Buyer materially prevents Seller from installing the Facility, or otherwise fails to perform in a way that materially prevents Seller from performing under this Agreement; or
- (v) Buyer sells the Project Site, or otherwise takes action with respect to the Project Site, which materially frustrates the purposes of this Agreement.

(b) Seller's Remedies. If a Buyer Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, and subject to Article 11, Seller may terminate this Agreement and demand payment of the Early Termination Fee by Buyer as specified in Schedule 2 of this Agreement. Upon such termination, Seller shall remove the Facility and shall remediate and restore the Project Site to its pre-installation condition, as set forth in Section 11.1.

10.4 Limitation of Liabilities.

(a) THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE DAMAGES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE, EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE AS A RESULT OF A THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION IS OWED UNDER SECTION 12, OR ARISE AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (TO THE EXTENT SUCH DAMAGES ARE AUTHORIZED AGAINST BUYER UNDER APPLICABLE LAW).

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED

HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

THE PARTIES AGREE THAT (1) IN THE EVENT THAT ANY TAX CREDITS CLAIMED OR RECEIVED BY SELLER (OR ITS TAX INVESTORS) WITH RESPECT TO THE FACILITY ARE RECAPTURED AS A RESULT OF A BREACH OF THIS AGREEMENT BY BUYER AND THE RECAPTURE IS DIRECTLY AND CAUSALLY RELATED TO BUYER'S BREACH, THE RECAPTURED AMOUNT SHALL BE DEEMED TO BE DIRECT AND NOT INDIRECT OR CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT AUTHORIZED BY APPLICABLE LAW, BUYER AND SELLER SHALL REMAIN LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ATTRIBUTABLE TO THEIR NEGLIGENCE OR OTHER TORTS, OR THE NEGLIGENCE OR OTHER TORTS OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS.

(b) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).

ARTICLE 11: TERMINATION

11.1 Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon expiration of any Initial or Renewal Terms, or upon termination of this Agreement for any reason other than the exercise of the Purchase Option pursuant to Section 2.2, Seller shall disconnect and remove the Facility from the Project Site and shall remediate and restore the Project Site to the condition preceding the installation of the Facility at no cost to the Buyer. Such removal and restoration shall be completed no less than one hundred eighty (180) days from the expiration or earlier termination of this Agreement. If the Facility is located on Buyer's roof, Seller shall ensure that its removal shall not affect the integrity of the roof, including, without limitation, its leak-proof capacity (other than ordinary wear and tear). For a ground-mounted Facility, Seller shall remove all of its above-grade and below grade components to not less than three (3) feet below grade and bury all foundations below grade with topsoil and re-seed areas where pads were located with grasses and/or natural vegetation. Seller shall not have any obligation to remove any disconnected cables, lines or conduit which are buried three feet or more below grade, nor to replant trees or bushes that existed prior to the installation of the Facility and which were removed for the construction or the operation of the Facility.

11.2 Removal Fund Requirements.

(a) Removal Fund – General. To ensure that funds are available for the removal of the Facility and remediation of the Project Site upon the expiration or termination of this Agreement in accordance with Section 11.1, Seller agrees to deposit funds into an interest-bearing third-party escrow account at a federally insured banking

institution (the “Removal Fund”). The terms for the third-party escrow account shall be reasonably acceptable to the Buyer and the Seller.

(b) Interest. All interest earned on the Removal Fund shall become part of the Removal Fund.

(c) Removal Fund Review. All Parties shall receive quarterly reports from the escrow agent regarding the Removal Fund balance and shall otherwise have the right to request and review Removal Fund balances at any point prior to the expiration of Term, upon written notice to the escrow agent.

(d) Deposits. Beginning on the first day of the seventh year after the Commercial Operation Date, Seller shall make deposits into the Removal Fund in annual amounts of \$0.0026 per Watt of nameplate capacity of the Facility. Seller shall deposit equal annual amounts on the first day of each subsequent Anniversary Date during the Term. Seller agrees to deposit the annual amount until the Removal Fund (including interest income) has a balance equal to or greater than \$0.05 per Watt of nameplate capacity of the Facility.

(e) Estimate of Removal Costs. No later than five hundred and forty-five (545) days prior to the expiration of the Term, Seller shall provide Buyer a written estimate of the cost to remove the Facility and restore the Project Site to its condition prior to the installation of the Facility, as described in Section 11.1. Seller’s costs of removal shall not be limited to the amounts deposited in the Removal Fund. The Parties shall meet within thirty (30) days after such written estimate is received by Buyer to resolve any concerns regarding such estimated cost. Upon the Parties’ agreement on the removal cost estimate, Seller shall deposit additional funds into the Removal Fund, if necessary, to ensure that the balance in the Removal Fund is greater or equal to the removal cost estimate determined pursuant to this Section 11.2(e).

(f) Removal Fund. Should Seller fail to comply with any obligation to remove the Facility and restore the Project Site as required herein, Buyer shall provide thirty days’ notice to the escrow agent of its intent to draw on the Removal Fund to complete such obligation. Seller will then have thirty (30) days from receipt of such notice to either begin removal and restoration of the Project Site in compliance with this Article 11 or begin dispute resolution proceedings. If, at the end of such thirty (30) day period or the completion of any dispute resolution proceedings related to such removal or restoration (whichever comes first), Seller has failed to complete such removal or restoration activities to either the Buyer’s satisfaction or in compliance with any final determination of any such dispute resolution proceedings, Buyer shall be entitled to draw on the Removal Fund in order to fulfill Seller’s removal and restoration obligations herein, and if any such funds are exhausted, Buyer may exercise any remedies it may have at law or equity against Seller for failure to comply with the terms herein.

(g) Abandonment. If Seller fails to complete its removal and restoration obligations under this Agreement within one hundred eighty (180) days after termination of this Agreement (or such other date mutually agreed to by the Parties), then, in addition

to Buyer's other remedies under this Agreement, at law or in equity for such failure, any part of the Facility and all personal property of Seller not removed from the Project Site within one hundred eighty (180) Days after such termination of this Agreement shall be deemed abandoned by Seller, and shall become the property of Buyer, and Buyer may, at its option, remove or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. Buyer shall have no liability to Seller for any property deemed abandoned per this Section 11.2.

(h) Control of Removal Fund. The Removal Fund shall at all times be controlled by the escrow agent and/or its permitted successors and assigns, and the Parties shall have no claims of ownership, possession, or other rights to the Removal Fund, other than the right to draw upon the Removal Fund as provided in this Section 11.2, absent a breach of Seller's removal obligations as set forth in this Agreement. Prior to the completion of all removal and restoration activities required under this Agreement, the Parties shall be prohibited from removing or withdrawing any funds from the Removal Fund without the prior written consent of each Party. Upon completion of all removal and restoration activities at the end of the Term of this Agreement in accordance with this Article 11 and to Buyer's satisfaction, all funds remaining in the Removal Fund shall be distributed to Seller or its permitted successors and assigns and the escrow agent shall be entitled to close such account.

(i) Salvage Value. The Seller shall be entitled to realize the salvage value, if any, of all Facility components that Seller removes from the Site in accordance with this Section 11.2, but which are not disposed of as a result of the removal and restoration process.

11.3 Survival.

(a) The following sections shall survive termination or expiration of this Agreement:

- (i) Obligations to pay by either Party that have accrued prior to termination or expiration;
- (ii) Indemnification obligations;
- (iii) Limitation of liability provisions;
- (iv) Obligations to remove the Facility and restore and remediate the Project Site;
- (v) Restriction regarding the use of Buyer's name for commercial purposes (16.30); and
- (vi) Publicity and Confidentiality obligations (16.33).

ARTICLE 12: INDEMNIFICATION

12.1 Indemnity Obligations.

(a) To the fullest extent permitted by law, each Party (“Indemnifying Party”) shall defend, indemnify and hold harmless the other Party, and its permitted successors and assigns, and their elective or appointive board, officers, directors, employees, agents, Affiliates and representatives (each, an “Indemnified Party”) from and against any and all claims, liability or losses, including but not limited to, those losses arising from (i) personal injury or death, (ii) damage to property, (iii) Taxes for which the Indemnifying Party is responsible under this Agreement, (iv) fines or penalties payable by the Indemnified Party, or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party’s performance of this Agreement and, in the case of Seller specifically, (i) the development, design, construction, installation, use, ownership, maintenance, or removal of the Facility or (ii) the failure to properly interconnect the Facility or comply with the requirements or procedures of the Local Electric Utility. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify and hold harmless an Indemnified Party for the negligent acts, omissions, willful misconduct or violation of law by the Indemnified Party, its officers, directors, employees, Affiliates, subcontractors or agents. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that Party’s negligence.

(b) The Indemnifying Party shall defend any claims, liabilities, or lawsuits at its cost and expense. The Indemnifying Party shall defend the Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party’s selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions provided, however, that the failure to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. No Indemnified Party shall take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and no Indemnifying Party shall settle any such claims without the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld, unless the settlement includes a full and unconditional release of claims against the Indemnified Party.

(c) If Indemnifying Party refuses or fails to undertake or diligently prosecute such defense on behalf of Indemnified Party, Indemnified Party will have the right to provide its own defense, and Indemnifying Party will reimburse Indemnified Party for such expenditures, including reasonable attorney’s fees and costs. Indemnifying Party’s obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Indemnified Party or any other person, except as may arise solely from the negligence or solely from the willful misconduct of the Indemnified Party, its

officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act, inverse condemnation, or any other statutory or legal theory. All obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

(d) Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided by Seller to Buyer under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards against Buyer as a result of any such claim.

ARTICLE 13: REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Seller's Representations, Warranties and Covenants.

Seller represents, warrants, and covenants to the Buyer that as of the Effective Date of this Agreement:

(a) Seller is duly organized and validly existing as a limited liability company, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(b) Seller has the legal power and authority to make and carry out this Agreement, the Lease and the O&M Agreement and to perform its obligations hereunder and thereunder; and all such actions have been duly authorized by all necessary proceedings on its part;

(c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

(d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

(e) It has obtained all Permits required by any Governmental Authority or other third party necessary for such Party to own its assets, carry on its business or other activities, and to execute and deliver this Agreement; and such Party is in compliance with all Applicable Law that relates to this Agreement in all material respects

(f) Seller will deliver to Buyer at the Delivery Point the Delivered Energy free and clear of all Liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person; and

(g) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Applicable Law, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

13.2 Seller's Additional Representations, Warranties and Covenants.

(a) Seller warrants, represents and covenants that all of its operating and maintenance personnel shall be adequately qualified and trained throughout the term of this Agreement.

(b) Seller shall conform to all requirements in Exhibits A and B of this Agreement (as may be modified pursuant to this Agreement) and shall operate and maintain the Facility in accordance with Prudent Industry Practice.

(c) Seller expressly warrants that all goods supplied for the construction of the Facility shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions, and specifications furnished by Buyer, in compliance with all Applicable Law.

(d) Seller covenants to repair the Project Site if such repairs are necessary as a direct result of Sellers' authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

(e) EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY.

13.3 Buyer Representations and Warranties.

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

(a) Buyer is a [municipal corporation] [not-for-profit organization] validly organized under New York State law, and has the legal power and authority to make and carry out this Agreement, the Lease and the O&M Agreement and to perform its obligations hereunder and thereunder, and all such actions have been duly authorized by all necessary proceedings on its part; and

(b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its

enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

(c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required Permits from Governmental Authorities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Facility to be installed and operated in accordance with all Applicable Law.

(d) It has obtained all Permits required by any Governmental Authority or other third party necessary for such Party to own the Project Site and to execute and deliver this Agreement; and such Party is in compliance with all Applicable Law that relates to this Agreement in all material respects.

(e) All information provided by Buyer to Seller as it pertains to usage and Buyer's estimated electricity requirements, is accurate in all material respects; (ii) Buyer 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; (iii) no Energy generated by the Facility will be used to heat a swimming pool or exported to a party or Facility outside of the State of New York; and (iv) during the five (5) year period prior to the Effective Date, sufficient funds for the procurement of utility services have been appropriated by the Buyer.

(f) Representations Regarding Security Interest. Buyer has been advised that part of the collateral securing the financial arrangements for the Facility may be the granting of a first priority perfected security interest (the "Security Interest") in the Facility and in Seller's leasehold interest in the Project Site to a Financing Party. In connection therewith, Buyer represents and warrants as follows:

- (i) to Buyer's knowledge, the granting of such Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement or security agreement affecting the Project Site
- (ii) Buyer is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Project Site that could attach to the Facility as an interest adverse to Seller's Financing Party's Security Interest therein
- (iii) to Buyer's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

- (iv) Buyer is authorized by Applicable Law to grant such Security Interest in the Facility and Seller's leasehold interest in the Project Site, and, upon request, will take all necessary action required under Applicable Law to grant the Security Interest.
- (v) Any Financing Party shall be an intended third-party beneficiary of this Section 13.3.

ARTICLE 14: ASSIGNMENT AND FINANCING

14.1 Collateral Assignment and Assignment to Financing Parties.

(a) Buyer acknowledges that Seller may be financing the acquisition, operation, and/or installation of the Facility through Financing Parties, and that Seller may assign, or in the case of a sale-leaseback transaction, sell and lease back, the Facility and/or may secure Seller's obligations to a Financing Party without Buyer's prior consent by a pledge or collateral assignment of this Agreement and a first security interest in the Facility and Seller's leasehold interest in the Project Site (a "Collateral Assignment"). In order to facilitate a Collateral Assignment by Seller, and with respect to any Financing Party of which Seller has notified Buyer in writing, Buyer agrees to take any reasonable action and provide any documentation reasonably requested by Seller in connection with such a transaction, and agrees as follows:

- (i) Buyer consents to the Collateral Assignment by Seller to a Financing Party that has provided financing for the Facility of the Seller's right, title and interest in and to this Agreement.
- (ii) Buyer will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Buyer under this Agreement, inclusive of a reasonable description of Seller default.

(b) Any Collateral Assignment by Seller shall not release either Party of its obligations hereunder. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests and obligations under this Agreement, it shall do so in writing.

14.2 Assignment. Except as otherwise provided in Section 14.1 and this Section 14.2 Seller shall not sell, transfer or assign the Seller's rights and obligations under this Agreement, or any interest in this Agreement (collectively, a "Full Assignment"), without the prior written consent of Buyer, provided, however, that, without the prior consent of Buyer, but with ten (10) days' prior written notice to Buyer, Seller may fully assign this Agreement to (a) an Affiliate of Seller, or (b) any person succeeding to all or substantially all of the assets of Seller that meets the qualifications set forth in subsections (a) through (d), below, of this Section. For any assignment requiring Buyer's consent, Buyer has thirty (30) days to approve or deny Seller's written request for Full Assignment (unless the parties mutually agree in writing to a longer period), or such assignment shall be deemed approved. Upon the completion of a Full Assignment by Seller that follows the requirements of this Agreement, the term "Seller" shall mean the Assignment Assignee. Buyer's consent to any Full Assignment shall not be unreasonably withheld, conditioned or delayed if Buyer has been

provided with proof to the Buyer's reasonable satisfaction that the proposed assignee (and subcontractor(s) with whom it has an active contract):

- (a) has experience in owning, operating and maintaining solar PV systems greater than or equal to that of Seller; and
- (b) has the financial capability and credit rating equal to or greater than that of Seller; and
- (c) has the ability to maintain the Facility and provide the services provided pursuant to this and the O&M Agreement in the manner required by this Agreement and the O&M Agreement; and
- (d) provides proof that it can comply with the Removal Fund requirements of this Agreement.

Seller will not sell, lease, or otherwise convey its interest in the Facility to any Person unless it also makes a Full Assignment to such Person and such assignment is permitted by this Agreement. Assignments or transfers not permitted or in compliance with this Section will be null and void. Any assignment by Seller without required prior written consent of Buyer shall not release Seller of its obligations hereunder.

14.3 Rights of Assignees Upon Event of Default.

(a) In the case where a Seller has defaulted under its obligations under this Agreement, any Financing Party shall have the right but not the obligation to (i) cure such default on Seller's behalf, including the right to pay all sums due and to perform any other act, duty, or obligation required of Seller hereunder, or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement, or (ii) assume the Seller's obligations under this Agreement within 60 days of receipt of written notice of the Seller's default. For avoidance of doubt, in the event that a Financing Party exercises its rights contemplated in this Section, such Financing Party shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under this Agreement.

(b) In the event that a Financing Party exercises its right to assume all of Seller's rights, interests, and obligations under this Agreement, it shall so assume in writing, and Seller shall have no further obligation to Buyer unless accrued up to that point and will provide notice to Buyer in writing.

(c) Nothing herein requires the Financing Party to cure any default of Seller under this Agreement (unless the Financing Party has succeeded to Seller's interests under this Agreement). Buyer shall reasonably cooperate with the Financing Party in the Financing Party's efforts to cure the default.

(d) Buyer will not terminate this Agreement unless (a) it has given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the

condition giving rise to such right, and (b) the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within the periods provided for in this Agreement. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, Buyer shall not unreasonably withhold its agreement to extend such period for cure for a reasonable period of time under the circumstances until such cure has been completed.

14.4 Payments and Notices.

(a) If a Collateral Assignee elects to assume the Seller's obligations under this Agreement, it will be solely responsible for notifying the Seller and any other Collateral Assignees of this intention. The Buyer shall not be responsible for passing any notices, information and/or communications between the Seller and Collateral Assignees. If a Collateral Assignee assumes Seller's obligations under this Agreement, Buyer shall make all payments due under this Agreement to an account specified by such Collateral Assignee. For avoidance of doubt, upon the Collateral Assignee's assumption of Seller's obligations under this Agreement, the previous Seller shall not retain any of its rights or obligations under this Agreement and payments made by Buyer to the Collateral Assignee shall satisfy Buyer's payment obligations under this Agreement.

(b) Seller is solely responsible to provide contact information, including mailing addresses, email addresses and phone numbers for all Collateral Assignment assignees and Full Assignment assignees to Buyer. Buyer shall notify all Collateral Assignment assignees for which it has contact information within 15 days of a Seller Default. Seller shall be solely responsible for any instance where a Collateral Assignment assignee does not receive notice due to the Seller not providing contact information to Buyer.

14.5 Collateral Assignee Changes. Buyer acknowledges and agrees that Seller, subject to the terms and conditions of this Agreement may change one or more Collateral Assignment assignees. In the case that a Seller changes a Collateral Assignment assignee, Seller shall provide Buyer with any relevant, new contact information and payment directions as instructed by Seller. The terms and conditions of this Agreement apply to any change in Financing Party by Seller.

14.6 Notwithstanding any language to the contrary, when any assignee chooses to exercise any rights against Buyer, it shall indemnify Buyer per the terms of this Agreement (and shall agree to do so in writing upon request by Buyer) for any claims arising from the exercise its rights to assume Seller's obligations under this Agreement. By way of example and not limitation, such indemnification obligations shall extend to claims by other Financing Parties and Collateral Assignees asserted against Buyer. Any assignee's ability to exercise any rights against Buyer shall be contingent on the assignee's assumption of such indemnification obligations.

ARTICLE 15: NON-APPROPRIATION

15.1 This Agreement is intended by the Parties to be an energy services contract under Article 9 of the New York State Energy Law. Pursuant to and in accordance with Section 9-103(2) of the New York Energy Law, to the extent that Buyer is a New York agency or municipality (as those terms are defined under Applicable Law), this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefore shall be incurred beyond the amount of such monies, and it is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

15.2 Notwithstanding anything to the contrary in this Agreement, due to the constitutional limitations on Buyer, it may choose not to appropriate funds for the procurement of any utility services for Buyer for a particular fiscal year (a "Budgetary Non-Appropriation Event"). Buyer agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement, and it is the present intention and expectation of the Buyer that the applicable budgetary entity, within the limits of available funds and revenues, will make an appropriation of a sufficient amount to fund Buyer's obligations hereunder during each fiscal year of the Term; provided, however, this declaration of intent shall not be binding upon any future applicable budgetary entity in any future fiscal year, except to the extent of any previously appropriated funds.

15.3 If a Budgetary Non-Appropriation Event occurs, Buyer shall promptly give Seller notice of such Non-Appropriation Event (an "NAE Notice"). During a Budgetary Non-Appropriation Event, if the Buyer does not have other funds available to make payments otherwise due under this Agreement, the Buyer is not obligated to pay for (and the Seller shall not be required to deliver) any services provided under this Agreement until the Budgetary Non-Appropriation Event has terminated; *provided* that Buyer shall reimburse Seller for payments of any Energy delivered during a Budgetary Non-Appropriation Event if funds for utility services are appropriated retroactively. Notwithstanding the occurrence of a Budgetary Non-Appropriation Event or the delivery of the NAE Notice, Buyer will not otherwise interrupt or impair the delivery of Energy or jeopardize Seller's sale, transfer or other monetization of Tax Attributes.

15.4 If a Budgetary Non-Appropriation Event continues for more than 180 days, Seller, in its sole discretion, (i) may terminate the Lease, this Agreement and the O&M Agreement and remove the Facility from the Project Site, (ii) may continue to operate the Facility and deliver Energy to third parties, or (iii) may continue to operate the Facility and deliver the Energy to Buyer without payment by Buyer therefore during the applicable fiscal year (and each fiscal year thereafter until an appropriation is made). Under the circumstances of (iii), other than with respect to the obligation to make payment for Energy delivered, all obligations of Buyer under this Agreement shall remain in full force and effect. Seller shall select option (iii) at its own risk, and if no such appropriation is ever made covering the time period during which such Energy is delivered to Buyer, Seller's sole remedy is to elect options (i) and (ii) and Buyer shall not be liable for, and Seller shall waive any claim against Buyer for, failure to pay for the Energy delivered during that time period for which there was no appropriation.

15.5 If Seller elects option (i) under Section 15.4 above, Seller shall cause the Facility to be disconnected and removed from the Project Site in accordance with Section 11.1, and Buyer shall pay to Seller all reasonable removal costs within 30 days after receiving Seller's invoice for such removal costs.

15.6 During the continuation of a Budgetary Non-Appropriation Event, (A) Seller shall not be required to deliver any Energy generated by the Facility to Buyer, (B) Seller may sell all Energy generated by the Facility to any third party and recover from the Buyer (pursuant to Section 15.7 or otherwise) the difference between the Contract Price and the price at which such Energy is sold to a third party, and (C) to the extent permitted by Applicable Law, Buyer shall allow Purchaser to wheel all Energy generated by the Facility through the Delivery Point to the Local Electric Utility's Distribution System.

15.7 To the extent that, after providing an NAE Notice, Buyer appropriates or receives any monies for the payment of expenses similar to those owed to Seller for the purchase of Energy under this Agreement, Buyer shall pay such monies to Seller before paying them to any other party until such time as Seller is made whole for any amounts due and owing under this Agreement.

ARTICLE 16: OTHER TERMS & CONDITIONS

16.1 Notices.

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given three (3) days after being sent by registered or certified mail, return receipt requested; one (1) day after being sent by overnight courier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to the Parties at the addresses listed in Schedule 1 of this Agreement. Each Party may designate a different person and address by sending written notice to the other Party, to be effective no sooner than ten (10) days after the date of the notice.

16.2 Compliance with All Laws.

The Parties shall at all times comply with all Applicable Law. The Parties shall keep themselves fully informed of Buyer's charter, codes, ordinances and regulations and of all Applicable Law in any manner affecting the performance of this Agreement and must at all times comply with all Applicable Law as may be amended from time to time. Seller shall procure and maintain all Permits necessary for the performance of this Agreement and shall pay its respective charges and fees in connection therewith.

16.3 No Dedication.

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Facility or any portion thereof to the public or to any portion thereof.

16.4 Non-Waiver of Rights.

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

16.5 Headings.

All titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

16.6 No Third-Party Beneficiary.

Except as to Seller's Financing Parties referred to in Article [12] of this Agreement, including but not limited to Seller's Financing Parties, who are intended third party beneficiaries of this Agreement and the Lease, neither this Agreement nor the Lease shall be construed to create rights in, or to grant remedies to, any third party.

16.7 Forward Contract.

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

16.8 Governing Law.

This Agreement is made in the State of New York and shall be interpreted and governed by the laws of the State of New York without regard to conflict of law principles.

16.9 Venue.

In the event that suit shall be brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of New York in Onondaga County or if federal jurisdiction is appropriate, exclusively in the United States District Court for the Northern District of New York located in Syracuse, New York.

16.10 Nature of Relationship.

(a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

(b) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.

(c) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.

(d) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work only, and not as to the means by which such a result is obtained. Buyer does not retain the right to control the means or the method by which Seller performs work under this Agreement.

16.11 Subcontracting.

All subcontractors shall be subject to background checks and Seller shall notify Buyer of its intent to use a subcontractor prior to such subcontractor's entry on the Project Site. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

16.12 Good Faith & Fair Dealing.

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

16.13 Severability.

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

16.14 Counterparts.

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.

16.15 Cooperation.

The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

16.16 Necessary Acts and Further Assurances.

The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. Buyer shall provide Seller estoppel certificates confirming the status of this Agreement and acknowledging that Buyer has no rights in the Facility. Buyer shall obtain, and pay any costs to obtain, all consents required for Buyer to enter into and perform its obligations under this Agreement from Buyer's lenders, landlords and tenants, if any, and those of any other persons with interests in Buyer's real property upon which Seller's personal property is located. These consents shall include estoppel certificates which recognize the rights of Seller, Seller's Financing Parties, and Seller and Seller's Financing Parties' assignees and successors under this Agreement.

16.17 Construction.

The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

16.18 Entire Agreement, Integration/Merger Clause.

This Agreement, together with all Exhibits and schedules attached hereto, constitute the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

16.19 Non-Discrimination.

Seller shall comply with all applicable Federal, State, and local laws and regulations including Buyer's policies concerning non-discrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504). Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual

orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

16.20 Non-Exclusive Contract.

This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

16.21 Modification.

This Agreement may be supplemented, amended, or modified only by the mutual written agreement of the Parties.

16.22 Hazardous Substances.

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the applicable Regulations, the Seller must include a Material Safety Data Sheet (MSDS) with delivery or shipment. Each MSDS must reference the contract/purchase order number and identify the "Ship to Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

16.23 Disentanglement.

Seller shall cooperate with Buyer to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Upon request by Buyer, Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data provided to Seller by Buyer, and held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

16.24 Accountability.

Seller will be the primary point of contact and assume the responsibility for all matters relating to Seller's performance under this Agreement, including those involving Seller's vendors and subcontractors.

16.25 Conflict of Interest.

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

16.26 Damage and Repair.

Any and all damages to a Party's property caused by the other Party's negligence or operations shall be repaired, replaced or reimbursed by such Party at no charge to the other Party. Repairs and replacements shall be completed within seventy-two (72) hours of the incident, unless the Parties agree to an extension or another time frame, or if such repairs or replacements cannot be completed within such timeframe, then upon notification by the repairing Party then the Parties shall mutually agree on an alternative timeframe to complete such repair or replacement. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from a Party's vehicles or during performance shall be the responsibility of such Party. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer, Damage observed by either Party, whether or not resulting from such Party's operations or negligence shall be promptly reported to the other Party.

16.27 Cooperation with Review.

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the Facility, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits.

16.28 Debarment.

Seller represents and warrants that it, its employees, subcontractors and agents are not suspended, debarred, or excluded from, or ineligible from, receiving Federal or state funds. Seller must within 30 calendar days advise the Buyer if, during the term of this Agreement, the Seller becomes suspended, debarred or excluded from or ineligible for, receiving Federal or state funds.

16.29 Debt Liability Disclaimer.

Except as set forth in this Agreement, the Buyer, including, but not limited to, any source of funding for Buyer, any general fund or any special self-insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. Buyer is not liable for and shall be held harmless and indemnified by Seller for any claims or damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts

taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller.

16.30 Use of Buyer's Name for Commercial Purposes.

Seller or Buyer may not use the name of the Buyer or Seller or reference any endorsement from the Buyer or Seller in any fashion for any purpose, without the prior express written consent of the Buyer and or Seller.

16.31 Account Manager.

Seller and Buyer must assign account managers to facilitate the contractual relationship, and to be fully responsible and accountable for fulfilling Buyer's and Seller's requirements. Seller and Buyer represent and warrant that such persons will ensure that Buyer and Seller receive adequate support, problem resolution assistance and required information on a timely basis.

16.32 Liens.

To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by Governmental Authorities for taxes ("Lien") on or with respect to the interests of the other in the Project Site or the Facility hereunder. To the extent allowed under Applicable Law, Seller and its subcontractors shall execute lien waivers with respect to any mechanic's or materialman's lien against Buyer's interest in the Project Site. If permitted under Applicable Law, Buyer will post notices of non-responsibility to notify Seller, its subcontractors and others that Buyer is not responsible for work performed on any Facility. Each Party shall promptly notify the other, in writing, of the imposition of a Lien on the property interests of the other Party, and shall promptly cause such Lien to be discharged and released as of record without cost to the other Party, provided, however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any loss which could reasonably be expected to arise if such Lien is not removed or discharged. The Party causing the Lien to be recorded shall hold the other Party harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the creation and discharge of such Lien and the negligence of the Buyer or of its officers or employees when acting within the course and scope of their employment.

16.33 Publicity and Confidentiality.

(a) Publicity. The Parties acknowledge that each may desire to publicize information about this Agreement or any Facility. The Parties therefore agree that each may make press releases, including all other marketing materials about entering into this Agreement, the size and location of the Facility, and the identity of the other Party, upon prior written consent of the other Party, subject to the provisions of Section 16.33(e). However, the terms of this Agreement and information about the Facility other than that

described above constitutes Confidential Information, as defined below, and is subject to the remaining provisions of this Section 16.33.

(b) Limits on Disclosure of Confidential Information. Subject to the exceptions set forth below in Section 16.33(c), each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement.

(c) Permissible Disclosures. Seller may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Seller in connection with this Agreement or the Facility. In addition, if a receiving Party is required by Applicable Law (including the Freedom of Information Act, the New York Freedom of Information Law or any similar law), validly issued subpoena, required filing, or the rules of any stock exchange, to disclose any Confidential Information provided by the disclosing Party, the receiving Party may make disclosure as required by Applicable Law, but the receiving Party shall prior to making any disclosure notify the disclosing Party of the requested disclosure and shall use its reasonable efforts to cooperate with the disclosing Party, but at the expense of the disclosing Party, in any efforts by the disclosing Party to minimize the extent of the Confidential Information disclosed and the persons to whom disclosed.

(d) Enforcement of Confidentiality Provisions. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 16.33 and agrees that the provisions of this Section 16.33 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 16. The provisions of this Section 16.33 shall survive until three years after the effective date of any termination of this Agreement.

(e) Reporting Rights. Seller shall retain certain publicity rights with respect to the Facility as long as Seller owns the rights to the Tax Attributes. Without the express written consent of Seller, which shall not be unreasonably withheld or delayed, Buyer shall not make or publish any public statement or notice regarding any Tax Attributes with respect to the Facility. After consultation with Seller, Buyer shall have the right to publicize that it is serving as a “site host” for the Facility and to display photographs of the Facility in its advertising and promotional materials; provided, however, that any such materials shall identify Seller as the owner and developer of the Facility. In the case of either Party, any such publication or advertising or promotional materials shall be in compliance with Applicable Law, including but not limited to Federal Trade Commission rules and regulations.

16.34 System Ownership. Seller or Financing Party shall be the legal and beneficial owner of the Facility at all times during the Term of this Agreement. The Facility is personal property and shall not attach to or be deemed a part of, or fixture to, the Project Site. The Facility shall at all times, for purposes of Article 9 of the Uniform Commercial Code, retain the legal status of

personal property as defined under Article 9 of the Uniform Commercial Code. Buyer shall have no ownership interest in such Facility and no responsibility for its operation or maintenance. Neither Buyer nor any party related thereto shall have the right or be deemed to operate a Facility for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code, and notwithstanding any provision to the contrary under this Agreement, neither Buyer nor any Person related to the Buyer shall bear or be deemed to bear any significant financial burden if there is nonperformance by Seller under this Agreement, as the phrase “any significant financial burden if there is nonperformance” is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

16.35 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the Buyer of electric energy produced at an alternative energy facility.

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

SELLER: Abundant Solar Power Inc.

Signature: _____

By:

BUYER: Sample Customer

Signature: _____

By:

Exhibit A

Project Specifications

Site Name	
Address	
GPS	
DC Size (kWp)	
AC size (kW)	
Oversize Ratio	
Inter-row Spacing (ft)	
Panel Tilt Angle	
Solar Array Area (acres)	

<u>Component</u>	<u>Make</u>	<u>Model</u>
Modules		
Inverters		
Racking System		

Data Collection - The PV System will include a Utility Style AC meter located near the inverter. This meter will provide a method of recording total energy generated by the PV system.

Annual Historical Usage: _____kWh

Estimated Energy Output: The system is estimated to produce _____kWh annually. This is equal to _____% of annual historical usage.

Meter location: the location identified as the "utility connection point" in the Preliminary Site Plan (see following page(s)) shall be the location where the metering equipment is placed

Commissioning test to be performed prior to COD:

1. Megger testing of all AC & DC cables
2. Hi-Pot testing of medium voltage cables
3. Polarity and Voc measurements & IV Curve Testing
4. Ground resistance testing
5. Torque verifications at inverters, panelboards (AC combiners), switchboards and transformers
6. Inverter checklist
7. Calibration certificates for test equipment
8. Factory test reports as available
9. Electrical inspection
10. Placards

Exhibit B

Outage Protocols, Notices and Meters

1 Outage Protocols

1.1 Seller is to notify Buyer of all planned or Forced Outages.

Outage information provided by Seller is to include at a minimum start and stop time of Outage, capacity out of service (kW), equipment out of service, and the reason for Outage.

1.2 Planned Outages for Annual and Short Term Operational Maintenance

Notice for Planned Outages shall be provided by Seller to Buyer at least four (4) Business Days prior to the start of the requested Outage. Buyer and Seller shall work in good faith to schedule any Planned Outages at mutually convenient dates and times.

1.3 Forced Outages

“Forced Outages” are any unplanned reduction in the capability of the Facility. Forced Outages shall be reported per DAS noticing or otherwise by Seller to Buyer within four (4) hours of such Outages. Notice by Seller to Buyer of a Forced Outage shall include the reason for the Outage (if known), expected duration of the Outage.

Within forty-eight (48) hours of a Forced Outage or two Business Days whichever is longer, a detailed email or other written report shall be provided by Seller to Buyer specifying the reason for the Outage, expected duration of such Outage, capacity reduction, and actions taken to mitigate such Outage.

2 Notices

All Schedules, Schedule changes, Scheduled Outages, Forced Outages, and planned outages are to be submitted to Buyer by email.

3 Meters

3.1 Metering

Seller shall install utility-grade revenue, electronic, bi-directional meter per this Agreement and Exhibit B. The meter must meet all applicable rebate requirements and Local Electric Utility requirements.

3.2 Data Acquisition System (DAS), Metrological Station Requirements and Monitoring:

3.2.1 The Seller shall provide a turnkey data acquisition and display system (DAS) that allows the Buyer to monitor, analyze and display historical and live solar electricity generation data on the Web. The DAS shall include instrumentation that allows the measurement of:

- Instantaneous system output in kW
- Instantaneous irradiation in watts/square meter.
- Instantaneous ambient temperature in degrees Fahrenheit
- Instantaneous wind speed (meters/second)
- Daily and year-to-date system output in kWh

Data shall be provided in a format that easily facilitates graphing and analysis in third-party database or spreadsheet programs.

3.2.2 The DAS system shall allow the Buyer to view current and historical data over the Internet, in 15-minute intervals. Seller shall include web access to this data in 15-minute data format as well as provide hourly, monthly, and annual summaries for the duration of this Agreement. The Buyer should also have direct access to the DAS data logger to collect and review all data.

3.2.3 The Seller will download and archive monthly data files for backup purposes. Files are to be stored for a minimum of five years on a rolling basis following system acceptance. The Seller will ensure that automatic communication between the PV system's DAS and designated Buyer-owned data systems is established and that downloads of the raw DAS data takes place to archive data throughout the useful life of the PV system on daily intervals.

3.2.5 Questions regarding observed system performance by the Buyer will be promptly responded to by the Seller including analysis of observed versus forecasted performance, root cause analysis, and other relevant information that may require on-site inspection by the Seller

Exhibit C

Insurance Requirements

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of the Buyer, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverage's and provisions:

1. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the Buyer. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 0413. Pursuant to the provisions of this Agreement insurance effected or procured by the Seller shall not reduce or limit Seller's contractual obligation to indemnify and defend the Indemnified Parties.

2. **EVIDENCE OF COVERAGE:** Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to Buyer, evidencing that all required insurance coverage is in effect. The Buyer reserves the rights to require the Seller to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices.

The Seller shall not receive a Notice to Proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the Buyer. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, Insurance policies and coverage(s) written on a claims-made basis:

- Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/Phase of this Agreement and acceptance of all work provided under this Agreement.
- The retroactive date must be before the execution date of the contract or the beginning of contract work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Seller must

purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. **ADDITIONAL INSURED:** All insurance required herein with the exception of Automobile Liability, Workers' Compensation, Employers Liability, and Professional liability shall be endorsed to name as additional insured: Buyer. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

The additional insured condition described above shall apply to all public entities entering into this agreement, with the specific entity and its respective related parties substituted for the Buyer. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the Work shall be covered as an additional insured under the same coverage as provided the Buyer as respects their ownership of the property and the work to be done thereon.

5. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of New York unless otherwise waived by Risk Management, and with deductible amounts acceptable to the Buyer.

Acceptance of Seller's insurance by Buyer shall not relieve or decrease the liability of Seller hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller.

6. **SUBCONTRACTORS:** Seller shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

7. **JOINT VENTURES:** If Seller is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:

- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies.
- Coverage shall be at least as broad as in the ISO Forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured."

8. **NOTICE OF CANCELLATION:**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Buyer insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the Buyer or their designated agent.

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self-insurance shall be approved in writing by the Buyer upon satisfactory evidence of financial capacity. Seller's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions. The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement.

The Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined below.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$2,000,000
- c. Personal Injury -\$2,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the Buyer:

The additional insured requirement described above applies to each Agreement, with the specific entity and its respective related parties substituted for the buyer. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 2038 04 13.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory New York Workers Compensation Law coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than one hundred fifty thousand dollars (\$150,000) per claim /event.
- c. Coverage as required herein shall be maintained for a minimum of three years following the termination or completion of this Agreement.

7. CLAIMS MADE COVERAGE

If coverage is written on a claims-made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply in the event that a single bidder is awarded multiple bid packets with simultaneous construction periods, the Buyer reserves the right to increase insurance limits after bid award but prior to commencement of construction to reflect the higher exposure.

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$4,000,000
- c. Products/Completed Operations aggregate ** -\$4,000,000
- d. Personal Injury -\$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations
- b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by the Buyer.
- c. Contractual Liability expressly including tort liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to the performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.
- d. Personal Injury Liability
- e. Independent Contractor's Protective liability
- f. Severability of interest
- g. Explosion, Collapse, and Underground Hazards (X, C and U)
- h. Broad Form Property Damage liability

3. General liability coverage shall not be endorsed to exclude the following:

a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to tort liability assumed by the insured under written contract with the Buyer.

b. X C & U (Explosion, Collapse and Underground) Endorsement:

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory New York Workers Compensation Law coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall ensure project material and equipment intended to become a part of the installation against risks of direct physical loss while in transit, in temporary storage, and while at the installation site. The coverage shall be in the amount of the value of the completed project. The property installation floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation and testing at the Entity's site. The coverage shall be in the amount of the value of the completed project and materials.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the Buyer, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$4,000,000
- c. Personal Injury -\$2,000,000

2. General liability coverage shall include:

- Premises and Operations
- Personal Injury Liability
- Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory New York Workers Compensation Law coverage.
- Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

Exhibit D: Authorization Agreement for Recurring Online Billing and Payment & Credit Card Payments/Debits

A. Instructions

1. This form is required to authorize Abundant Solar Power and/or its Affiliates, successors and/or assignees (hereinafter referred to as the “Company”) to:
 - Establish a Designated Payment Account for payment of recurring monthly Community Distributed Generation Credit Payments
 - Change the banking or financial institution information on an existing Designated Payment Account.
2. Thoroughly read the Terms and Conditions in Section B before completing this form. The Terms and Conditions in Section B are a part of this form and incorporated into this form. Contact your financial services representative with any questions.
3. Retain a copy of this form.
4. Complete all required fields on this form.

Customer Name* _____

Address 1* _____

City* _____ State* _____ Zip Code* _____

John Doe 123 Cherry Street Anytown, WA 12345 (123) 555-1212		DATE _____	1234
PAY TO THE ORDER OF _____		\$ _____	
MEMO First Bank of Anywhere Anytown, WA 12345		DOLLARS	
⑆123456789⑆	⑆1234567890⑆	⑆1234⑆	
Routing Number	Account Number	Check Number	

Direct-Debit Payment

Bank Name*:

Bank Account Number*:

Bank Routing Number*:

☐ Checking ☐ Savings

Signature Section. By signing below, you acknowledge that you have received, read, and agree to the incorporated “Terms and Conditions” in Section B and confirm the accuracy of the information provided above.

Signature _____ Date _____

*Required

B. Terms and Conditions

1. I (we) do hereby authorize the Company to initiate monthly recurring ACH Direct-Debit Payments to my (our) account(s) indicated at the financial institution(s) above. I further authorize the Company to initiate an adjusting or correcting entry as necessary. This authorization is for all payments due under your ***Community Distributed Generation Subscriber Agreement*** with the Company.
2. This authorization is to remain in full force and effect until the Company has received written or verbal notification from me (us) of its termination.
3. Notifications of changes to an existing account must be received at least 10 business days prior to the next draft date to be in effect as of that draft date.
4. Recurring ACH Direct-Debit Payments shall be drafted monthly, and the Company shall be required to give email notifications and/or online access to the amount(s) and due date(s).
5. No payments due to the Company will be considered “paid” until the Company receives the funds in full.
6. The Company will incur no liability as a result of a withdrawal being dishonored by your bank and/or credit card company.

Confidentiality/Security. All information provided on this form is stored with a third-party Tier 1 PCI Compliant Payment Processor (the highest level of security). All online transactions are processed with point-to-point encryption to protect your sensitive payment information.

To terminate your authorization or report alleged unauthorized transfers, please contact:

Abundant Solar Power Inc.
700 West Metro Park
Rochester, NY 14623
Phone: 1-833-653-6367
Email: info@abundantsolarenergy.com

Schedule 1
Notice Information

Buyer:

Sample Customer

Customer Address

Seller:

Abundant Solar
Power Inc.

700 West Metro Park,
Rochester, NY
14623

Financing Party:

Schedule 2

Early Termination Fee³

The Early Termination Fee with respect to each Facility under this Agreement shall be calculated in accordance with the following:

Year	Early Termination Fee/ kWp
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

³ Early Termination Fee schedule will be specific to each individual project.

Schedule 3

Contract Price

Year	PPA Contract Price
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Schedule 4

Project Site Description

<Project Name, Address, Size of land occupied by system size of property>

<Preliminary Site Plan Image>

Schedule 5

Expected Annual Contract Quantity

Year	Expected Annual Contract Quantity (kWh)	90% (kWh)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Schedule 6

Project Milestones

Project Name	
Project Start Date	
Anticipated Completion of Design Phase	
Anticipated Commencement of Construction	
Anticipated Completion of construction Phase	
Anticipated Commercial Operation Date	