



BuffaloPower

Solar PV, Storage, & Energy Efficiency
Power Purchase Agreement

Prepared For:

<<Company Name>>

<<Project Address>>

<<City>>, <<State>> <<Zip>>

Developer:

1/25/00

1212 Abbott Road, Suite B

Buffalo, NY 14218

info@buffalopowerdevelopment.com



Solar Power Purchase Agreement

This SOLAR POWER PURCHASE AGREEMENT ('Agreement') is entered into as of the _____ day of _____, 2020 (the 'Effective Date') by and between <<Customer Name>> a, <<Business State>> <<Business Type>>, having offices at <<Project Address>>, <<City>>, <<State>> <<Zip>> ('Customer') and 25, a New York Limited Liability Company ("Developer"), having offices at 1212 Abbott Road, Suite B, Buffalo, NY 14218. Each of Developer and Customer may from time-to-time be referred to individually in this Agreement as a "Party" and collectively as the "Parties".

Recitals

WHEREAS, Developer desires to develop, design, construct, own and operate a solar electric generating facility having an aggregate expected installed, nameplate capacity of approximately 142.14 kWp, which is further defined below as the 'Solar Facility'; and

WHEREAS, Developer intends to enter into a lease for the Solar Facility on real property owned by Customer as more particularly described on Attachment A to this Agreement (the 'Property'); and

WHEREAS Developer desires to sell, and Customer desires to purchase, on the terms set forth in this Agreement, all of the Electricity (as defined herein) produced by the Solar Facility.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE 1 DEFINED TERMS

In addition to the other terms that are defined elsewhere in this Agreement, the capitalized terms used in this Agreement shall have the meanings ascribed to them as follows:

"Applicable Laws" means any federal, state, county, local or municipal laws, regulations, and rules enacted by any Governmental Authority, now in effect or which may hereafter come into effect, applicable to the subject matter of this Agreement.

"Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

"Approvals" has the meaning set forth in Section 2.5 (*Permitting*).

"Billing Year" means each twelve-month period following the date of Commercial Operation.

"BSS" shall mean Buffalo Solar Solutions, Inc., a New York corporation.

“Business Day” means a day other than a Saturday, Sunday, federal holiday or day on which commercial banks in the State of California are closed.

“Commercial Operation” means when the Solar Facility becomes capable of generating and making available Electricity to the Customer and all necessary Approvals for the sale and delivery to the Customer of that Electricity have been obtained.

“Confidential Information” means information of a confidential or proprietary nature, whether or not specifically marked as confidential, that a reasonable person in similar circumstances would understand to be confidential or proprietary to the disclosing Party, including, without limitation, any documentation, records, listing, notes, data, files or records, memoranda, designs, financial models, accounts, reference materials, trade secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like; provided, however that Confidential Information does not include information which: (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

“Delivery Point” means the point at which Developer makes available to Customer the Electricity generated by the Solar Facility.

“Electrical Interconnection Point” means the point at which the Solar Facility connects to the Local Utility’s electric distribution system.

“Electricity” means electrical energy, measured in kilowatts and kilowatt-hours that is produced by the Solar Facility and is delivered to the Customer at the Delivery Point.

“Environmental Laws” means any and all federal, state, county, local or municipal laws, regulations and rules of any Governmental Authority regulating, relating to or imposing liability or standards of conduct concerning the protection of or discharge of materials into the environment, including without limitation, hazardous materials.

“Event of Default” has the meaning set forth in Article 9 (*Default and Termination*).

“Governmental Authority” means any national, state, local or other government, or any political subdivision thereof, and any government, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or person in question.

“Installation Site” has the meaning set forth in Section 2.1 (*Installation of Solar Facility*).

“Interconnection Equipment” means the equipment required at the Electrical Interconnection Point for the interconnection of the Solar Facility to the electric distribution system of the Local Utility.

“Interest Rate” means the rate per annum equal to the overnight Federal Funds Rate as reported in Federal Reserve Publication H. 15-519 or any successor publication, published by the Board of Governors of the Federal Reserve System.

“Local Utility” means, as applicable, the local electric utility in whose service territory the Property is located, or other alternative energy provider if that provider is delivering electricity to the Property.

“Losses” shall mean any and all claims, damages, losses and liability.

“Meter” has the meaning set forth in Section 3.3 (*Metering of Electricity*).

“NYSERDA” shall mean the New York State Energy Research and Development Authority, a New York public benefit corporation.

“Premises” has the meaning set forth in the Site Lease.

“Property” has the meaning specified in the recitals to this Agreement.

“Proceeding” shall mean a court action, lawsuit, cause of action or other legal, judicial, or administrative proceeding.

“Prudent Solar Practices” means the practices, methods and acts (including the practices, methods and acts engaged in or approved by engineers and operators generally with respect to solar systems the same as or similar to the Solar Facility) that at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision is made or an action is taken, would be expected to accomplish the desired result in a workmanlike manner and in compliance with Applicable Laws and applicable reliability and safety standards, in each case taking into account the written recommendations of manufacturers of equipment and taking reasonable steps to ensure that equipment is not operated in a negligent or reckless manner, in a manner unsafe to workers or the general public, or without regard to defined and applicable limitations and purposes. The term “Prudent Solar Practices” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted for the solar power industry with respect to the solar system in question.

“REC” has the meaning set forth in Section 4.1 (*Identification and Application for Incentives*).

“Related Persons” shall mean the relevant party’s affiliates and such party and its affiliates, directors, trustees, officers, employees, agents, assignees and successors.

“Site Lease” shall mean the Site Lease Agreement between Customer, as Landlord, and Developer, as Tenant, granting Developer a leasehold interest in the Property to permit the construction, installation, operation and maintenance of the Solar Facility.

“Solar Facility” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, integrators, meters, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring installed at the Property, including the Interconnection Equipment, for the installation of the Solar Facility at the Property and interconnection of the Solar Facility to the electric distribution system of the Local Utility, and any other related equipment more particularly described in the Solar Facility description attached hereto as Attachment C.

“System Operator” means the independent or other operator of the electric transmission system in the State or region in which the Property is located.

“Term” has the meaning set forth in Section 5.1 (*Term*).

ARTICLE 2

INSTALLATION OF SOLAR FACILITY

2.1 Installation of Solar Facility. Developer shall commence, no later than sixty (60) days after the later of (i) the Effective Date of this Agreement or (ii) the date that all the conditions set forth in Section 3.1 below are satisfied, to procure and install the Solar Facility on the Property. Developer shall install the Solar Facility and all related transmission lines, cables, fixtures, utilities, metering and Interconnection Equipment on the Property in the approximate initial locations described in Attachment A hereto (the “Installation Site”). The Solar Facility shall have the size and specifications set out in Attachment C.

2.2 Developer’s Responsibility for Performance of the Work. Developer shall furnish directly, or through subcontractors or suppliers, all professional expertise, management, labor, materials, supplies, fixtures, technology, equipment, skills, tools and machinery, testing and supervision, for the installation of the Solar Facility at the Property. Developer shall have full responsibility for all aspects of the design and construction of the Solar Facility, including any upgrades to Customer’s electrical distribution system which may be necessary to interconnect said system with the Solar Facility upon the Solar Facility’s installation.

2.3 Minimization of Inconvenience; Interruptions. During the installation of the Solar Facility, Developer shall use all reasonable commercial efforts to minimize any inconvenience and interference to Customer.

2.4 Customer’s Cooperation with Developer. The Customer shall work in good faith with Developer as to not impede Developer’s or its subcontractors’ progress of the work to install the Solar Facility.

2.5 Permitting. Developer shall identify all permits, licenses, authorizations and approvals necessary for the installation and operation of the Solar Facility, including, but not limited to, any Local Utility interconnection requirements or any roof warranty approvals or waivers (collectively “Approvals”). All required Approvals shall, to the extent allowable by Applicable Laws, be secured by the Developer. Customer, at no out-of-pocket expense to Customer, shall use all reasonable commercial efforts to assist Developer in obtaining all required Approvals. If, pursuant to Applicable Laws, only Customer may apply for an Approval, Developer shall assist Customer to the extent permissible with preparation and filing of the necessary application, and Customer shall promptly take all steps and execute all documents required for any such application. Developer shall bear the cost of all permit preparation and pay all permitting and license fees.

2.6 Interconnection Agreement. If the Local Utility requires that either Developer or Customer enter into an interconnection agreement with respect to the Solar Facility, the relevant Party shall negotiate in good faith with the Local Utility and exercise all reasonable commercial efforts to enter into such agreement so as not to impede or delay the Commercial Operation of the Solar Facility. In the event the Customer is required to enter into an interconnection agreement, the Developer agrees to bear costs, including legal costs, incurred by Customer in connection with such an agreement.

2.8 Completion of Installation. Developer shall give written notice within five (5) days after the installation of the Solar Facility is substantially complete and shall execute and deliver to Customer a certificate of substantial completion certifying that the Solar Facility has been installed.

2.9 Notice of Commercial Operation. Not less than ten (10) days before the commencement of Commercial Operation, Developer shall provide a notice of Commercial Operation to Customer. The notice of Commercial Operation shall (i) specify the date on which Commercial Operation will occur, and (ii) notify Customer that Developer is prepared to commence making available Electricity to the Customer.

2.10 Progress Reports. Upon Customer's request, not more than once every thirty (30) days, Developer will provide Customer the following information: a progress report stating the percentage of completion of the Solar Facility and a brief summary of construction activity during the prior month; and a brief summary of construction activity contemplated for the next month. Upon Commercial Operation, this progress reporting requirement shall end.

2.11 Approval of Plans. Prior to commencing construction of the Solar Facility, Developer shall obtain Customer's approval of Developer's work plans, which approval shall not be unreasonably withheld, conditioned or delayed. Within fifteen (15) days of Customer's receipt of Developer's work plans, time being of the essence, Customer shall give such approval or provide Developer with its requests for changes in substantially the same form as is attached to this Agreement as Attachment D or Customer shall be deemed to have approved the plans.

ARTICLE 3
SALE OF ELECTRICITY

3.1 Effectiveness. The obligations of Developer under this Agreement to make available Electricity and the obligation of Customer to take such Electricity shall be subject to the satisfaction by Developer, in its sole discretion, or waiver by Developer of each of the following conditions precedent. Should Developer not satisfy the conditions precedent by _____, Developer shall be entitled to terminate this Agreement. Neither Party shall have any obligation or financial liability to the other Party as a result of such termination. Conditions precedent are as follows:

- a) Execution of the Site Lease by Customer and Developer, in form and substance satisfactory to Developer in its sole discretion;
- b) Developer obtaining all Approvals necessary or desirable to permit the Solar Facility to make available and sell Electricity at the Delivery Point, on terms and conditions acceptable to Developer;
- c) Developer completing engineering reviews and Installation Site assessments, and Developer being satisfied, in its sole discretion, of the results of such reviews and assessments;
- d) Developer (or its Affiliate) and NYSERDA (or its successor agency) entering into an agreement for the purchase and sale of RECs, in form and substance satisfactory to Developer; and
- e) Developer being satisfied of the creditworthiness of Customer to perform its obligations under this Agreement.

3.2 Purchase of Electricity by Customer. Upon and after Commercial Operation, Developer shall sell and Customer shall purchase, all of the Electricity generated by the Solar Facility at the price per kilowatt hour specified in Attachment E (Price of Electricity Sold). Developer shall deliver all such Electricity to Customer at the Delivery Point.

3.3 Metering of Electricity. Developer shall measure the amount of Electricity delivered to Customer by the Solar Facility at the Delivery Point utilizing a commercially available revenue grade meter (the "Meter"). The Meter shall be installed, maintained, and/or replaced at Developer's expense.

3.4 Invoicing of Electricity Sold. Beginning approximately ten (15) days after the end of the first (1st) month of Commercial Operation and on or about the tenth (15th) day after the end of each month thereafter during the Term hereof, Developer shall render to Customer an invoice for the Electricity generated and delivered to Customer (measured in kilowatt hours) during such prior month. Payment for each such invoice shall be made to Developer by Customer not later than the last day of the month in which the invoice is received. Late payments shall accrue interest at the Interest Rate until the date payment is received by Developer.

3.5 Meter Testing. Once per calendar year, when Customer receives invoices for January or July, Customer may request a meter test, the cost of which shall be paid by Customer if such meter test is accurate to within \pm three (3) percent. If the meter test is not accurate to within \pm three (3) percent, then Developer shall promptly pay all costs for the meter test. If the meter test is not accurate to within \pm three (3) percent and there are overcharges, then Developer shall promptly credit any overcharges incurred during the prior twelve (12) months to Customer's Account. If the meter test is not accurate to within \pm three (3) percent and there are undercharges, Customer shall promptly pay Developer the amount of such undercharge incurred during the prior twelve (12) months.

3.6 Taxes on Sale of Electricity. If so required by applicable law, Customer shall be responsible for and pay all taxes imposed upon the sale of Electricity from Developer to Customer under this Agreement..

3.7 Payment Disputes; No Set-Off. If Customer disputes all or any part of an invoice submitted by Developer, it shall promptly notify Developer in writing of the amount disputed and the grounds for the dispute. The Parties shall attempt in good faith to resolve the amount disputed prior to the date payment is due. In all events Customer shall pay the undisputed portion by the date payment is due. The Parties shall in good faith continue to negotiate and shall exchange information relevant to the resolution of the dispute. If despite such good faith negotiations the Parties are unable to resolve the dispute within a period of forty-five (45) days (or such longer period as the Parties may agree) from Developer's receipt of the written notice, either Party may exercise any rights available at law or in equity. Upon resolution of the dispute, any payment due and owing shall be paid by the Party that owes it within five (5) Business Days of the date of resolution along with interest at the Interest Rate from the date such payment was originally due to the date such payment is actually received by the Party owed. If Customer does not dispute an invoice by payment due date, the invoice shall be deemed accepted. In no event shall Customer be entitled to exercise any right of set-off against payments owing to Developer.

3.8 Customer Responsibility for Back-Up Electricity; Utilities. Customer and Developer acknowledge and agree that the Solar Facility cannot supply all of Customer's electric supply requirements due to the Solar Facility's size and the intermittency of sunlight available and that the Local Utility shall be Customer's electric supplier of last resort. Accordingly, Customer shall maintain in full force and effect an electric service agreement with the Local Utility throughout the Term. In connection therewith, Customer shall keep in place its interconnection to the Local Utility distribution system and maintain the ability throughout the Term to receive electric supply from the Local Utility at the Electrical Interconnection Point and shall not cause interference with the export of Electricity from the Solar Facility to the Local Utility distribution system. Customer shall be responsible for and shall pay any and all charges that are imposed or collected by the Local Utility on its customers for Customer's electricity interconnection, regulatory fees and surcharges, taxes and other charges related to Customer's receiving electric supply service from the Local Utility, except any charges, fees or other costs directly associated with maintaining the Solar Facility as a project eligible for the tariff set

set forth on Attachment F to this Agreement in connection with applicable regulations, rules and/or orders promulgated by the New York State Public Service Commission or its successor agency. In no event shall Developer have any liability to Customer for any failure or inability of Customer to obtain electric supply from the Local Utility, whatsoever the cause.

3.9 Developer Right to Make Utility, ISO or Third Party Sales; Compensation. If, for any reason, including Force Majeure (as defined herein), Customer pursuant to this Agreement or by operation of law is excused for a period of time (the “Excused Period”) in whole or in part from its obligation pursuant to Section 3.2 to purchase all of the Electricity generated by the Solar Facility and Customer receives from the Local Utility any credit, compensation or remuneration for Electricity generated by the Solar Facility, but not purchased by Customer (the “Excused Purchase”), Customer shall pay Developer the lesser of the cash equivalent of the credit, compensation or remuneration received from the Local Utility during the Excused Period for the Excused Purchase or the price set forth in Attachment E (Price of Electricity Sold). Nothing in this Section 3.9 shall (i) reduce Customer’s obligation to purchase Electricity pursuant to Section 3.2 or (ii) abrogate Customer’s right to receive Value Stack credits pursuant to Section 3.11.

3.10 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item in this Agreement. Developer shall have the right to examine all such records for the purpose of ascertaining the reasonableness and accuracy of any cost, credit compensation or remuneration pursuant to this Agreement. Customer shall cooperate and assist Developer in obtaining any relevant information and records from the Local Utility.

3.11 Net Metering Provisions. Developer shall assist Customer in working with the Local Utility to credit the electricity delivered to Customer to such electric accounts as are designated in writing by Customer. If applicable, Customer shall be entitled to receive any and all credits from the Local Utility on account of electricity generated by the Solar Facility and delivered to the Local Utility.

3.12 No Resale of Electricity. Electricity purchased by Customer from Developer under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior written approval of the Developer.

3.13 Shutdown

3.13.1 Customer from time to time may request Developer to temporarily stop operation of the Solar Facility for reasons reasonably related to Customer’s activities in maintaining and improving the Property or the Premises, and Developer may from time to time shut down the Solar Facility for reasons related to maintenance or repair. During any such shutdown period, Customer will pay Developer the sum of payments that Customer would have made to Developer hereunder for Electricity that would have been produced by the Solar Facility during the period of the shutdown.

3.13.2 If the Premises are closed due to no fault of Developer, Customer shall nevertheless continue to pay Developer for all Electricity produced by the Solar Facility and delivered to the Delivery Point. Furthermore, if an interconnection with the Local Utility becomes deactivated through no fault of Developer such that the Solar Facility is no longer able to produce electricity or transfer electricity as contemplated by this Agreement, Customer will pay Developer an amount equal to the sum of: (a) payments that Customer would have made to Developer hereunder for Electricity that would have been produced by the Solar Facility in the absence of such deactivation; and (b) revenues or cash values of the incentives that Developer would have received, including RECs, in the absence of such deactivation.

3.14 Transfer of Premises. In the event Customer transfers (by sale, lease or otherwise) all or a portion of its interest in the Premises, Customer shall remain primarily liable to Developer for the performance of its obligations hereunder notwithstanding such transfer. However, if no Customer Event of Default has occurred and is continuing:

3.14.1 Provided the transferee is acceptable to Developer in its sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Developer in its sole discretion, Customer may be released from further obligations under this Agreement; or

3.14.2 Customer may purchase the Solar Facility for the Purchase Price (as defined below) and terminate this Agreement (provided, however, that the option to purchase under this Section 3.14.2 shall be available only after the fifth anniversary of the date of Commercial Operation).

ARTICLE 4 INCENTIVES

4.1 Identification and Application for Incentives. The Parties recognize and agree that the purchase, installation and operation of the Solar Facility may entitle either Developer or Customer to grants, rebates, subsidies, discounts or other economic incentives (“Incentives”), as well as renewable energy credits and carbon offsets, allowances or trading rights (“RECs”), whether offered as of the date hereof or in the future by a Governmental Authority, any Local Utility, any System Operator, or any private or quasi-public entity. Developer may apply for such Incentives and RECs on its own behalf or, to the extent required under the laws, regulations or rules governing the administration of such Incentives or RECs, on behalf of Customer. Customer consents to allow Developer to participate in any applicable Incentive or REC program, including programs sponsored by the Local Utility or the relevant System Operator.

4.2 Customer’s Cooperation in Obtaining Incentives. Promptly after Developer’s request therefor, Customer agrees to complete and submit any necessary information or applications, and shall cooperate with and provide assistance to Developer as necessary in the process of obtaining any Incentives or RECs identified by Developer, at no out-of-pocket expense to Customer. Customer further agrees to fully cooperate on a continuing basis with Developer to maintain all Incentives and RECs granted to Developer and/or Customer as a result of the installation or operation of the Solar Facility, at no out-of-pocket expense to Customer.

4.3 Benefit of Incentives. All Incentives and RECs received as a result of applications made by Developer or the Customer pursuant to this Article shall accrue to the benefit of Developer and be for its account. If Customer receives directly any Incentive payment, REC or other financial benefit or as a result of an application submitted by Developer or by Customer, Customer shall promptly provide notice thereof to Developer and pay over or assign to Developer the amount of such Incentive or REC. If an Incentive or REC received by Customer is not in the form of a cash payment, the Customer and Developer shall reasonably determine the value of such Incentive or REC. If such Incentive or REC is received by Customer prior to the date of Commercial Operation, Customer shall make a payment to Developer representing the monetary value of the Incentive or REC, as so determined. If any Incentive or REC, whether monetary or otherwise is received by Customer after the date of Commercial Operation, the amount or value of such Incentive or REC shall be added to the amount payable to Developer under the invoice prepared by Developer pursuant to Section 3.4 (Invoicing of Electricity Sold).

4.4 Developer Taxes. Developer shall be responsible for any federal and state income tax liability associated with any Incentives and RECs accrued to Developer's benefit.

ARTICLE 5 TERM OF THE AGREEMENT

5.1 Term. The term of this Agreement (the "Initial Term") shall be for a period commencing on the Effective Date and ending on the date which is (25) years after the date of Commercial Operation (the "Expiration Date"), unless terminated earlier pursuant to Article 9 (Default and Termination). Customer shall have a one-time option to extend the term of this Agreement for an additional five (5) years (the "Renewal Term") by giving notice to Developer no less than six (6) months prior to the end of the Initial Term. The Initial Term and any Renewal Term are collectively referred to herein as the "Term."

5.2 Customer's Option to Purchase. Upon the 6th anniversary of the date of Commercial Operation, and upon the expiration of the Term, and provided that no Event of Default of Customer shall have occurred and be continuing, Customer shall have the limited-time option to purchase the Solar Facility (the "Option"). Customer shall furnish written notice to Developer of its interest to exercise the Option not more than twelve (12) months and not less than six (6) months prior to the 6th anniversary date or the Expiration Date. The purchase price for the Solar Facility shall be its fair market value determined in accordance with Section 5.2.1 ("Purchase Price").

5.2.1 If Customer exercises such Option, Developer shall provide Customer with Developer's appraisal of the fair market value of the Solar Facility based on Developer's knowledge of the Solar Facility industry. Customer may accept such appraisal for use in determination of the Purchase Price. If Customer does not accept such appraisal within thirty (30) days of receiving the appraisal from Developer but Customer nevertheless wishes to proceed with the purchase of the Solar Facility, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within sixty (60) days of Customer's receipt of the appraisal from Developer, then the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar industry. Such appraiser shall act reasonably and in good faith to determine the fair market value of the Solar Facility and shall set forth such determination in a written opinion delivered to the Parties. The cost of such determination shall be shared equally by Developer and Customer. The valuation made by the appraiser shall be binding in the absence of fraud or manifest error. If Customer shall opt not to proceed with the purchase, then Customer shall promptly notify Developer in writing and Customer shall be solely responsible for the full cost of the appraisal. If the Parties cannot agree within thirty (30) days on the selection of a nationally recognized appraiser, then each Party shall select and retain its own nationally recognized independent appraiser at its sole cost and expense. Such appraisers shall act reasonably and in good faith to determine the fair market value and shall set forth such determination in a written opinion delivered to the Parties. The fair market value of the Solar Facility shall be the average of each fair market value of the Solar Facility as determined by the two (2) appraisers. This valuation shall be binding in the absence of fraud or manifest error. If Customer shall opt not to proceed with the purchase, then Customer shall promptly notify Developer in writing and Customer shall reimburse Developer for the full cost of Developer's appraisal.

5.2.2 Customer shall have thirty (30) days from the determination of the Purchase Price to provide a written commitment to exercise the Option.

5.2.3 If Customer exercises the Option, on the last day of the Term, Customer shall pay the Purchase Price in immediately available funds and Developer shall execute and deliver a bill of sale transferring title to the Solar Facility to Customer in as-is condition. Customer shall pay the amount of sales tax due, if any. Developer does not and shall not make any representations or warranties concerning the Solar Facility except as contained in the bill of sale. Developer shall, at Customer's request, assign to Customer any warranties, guarantees or, if permissible under the terms thereof, any service, repair or maintenance agreements with respect to the Solar Facility.

5.3 Removal. If Customer does not exercise the Option, Developer shall cause the removal of the Solar Facility and Tenant's Improvements as provided in Section 10 of the Site Lease Agreement.

ARTICLE 6
RIGHTS REGARDING SOLAR FACILITY / PROPERTY

6.1 Title to Solar Facility. Customer and Developer acknowledge and agree that Developer or Developer's installation contractor shall have and retain ownership and title to the Solar Facility and all its components at all times during the Term of this Agreement and after termination hereof, provided, however that Developer shall have the right to assign, pledge, transfer or convey title to the Solar Facility to a Financing Party, in accordance with Section 13.2 (*Financing*) below. Developer shall have the absolute right following any termination of this Agreement for any cause to remove the Solar Facility and all components thereof from the Property without interference from Customer or any of its agents, representatives or contractors.

6.1 Solar Facility Not a Fixture; Protective Filings. Customer and Developer acknowledge and agree that neither the Solar Facility nor any of its components shall constitute or be considered a fixture on the Property. Developer or any party providing financing to Developer or with respect to the Solar Facility may make filings, including protective filings under the Uniform Commercial Code, as it shall deem appropriate to defend and protect the filing party's right to title and interest in and to the Solar Facility and any security interest granted therein. If there is any mortgage or fixture filing against the Property which could reasonably be construed as prospectively attaching to the Solar Facility, Customer shall promptly, upon request of Developer, provide an acknowledgement and consent from such lienholder, in form and substance reasonably acceptable to Developer and/or such financing party, as applicable, stating that the ownership of the Solar Facility remains in Developer and further acknowledging that the Solar Facility is personal property of Developer and agreeing not to disturb the rights of Developer in the Solar Facility and under this Agreement.

ARTICLE 7
MAINTNENCE OF THE SOLAR FACILITY / PROPERTY

7.1 Solar Facility Operations and Maintenance. Developer shall operate and maintain the Solar Facility throughout the Term in accordance with Prudent Solar Practices and shall be solely responsible for any maintenance and repair. To that end, Developer will engage in regular remote monitoring of the facility's performance. Developer shall take any action reasonably necessary in Developer's reasonable discretion to maintain the Solar Facility's operation at peak performance and consistent with the manufacturer's specifications, including its eligibility for manufacturer warranties. Operations and maintenance activities may include, without limitation, annual or semi-annual inspections and routine maintenance, regular remote monitoring of system, repairing or replacing faulty components, and handling manufacturer warranty claims.

7.2 Inspections. Upon reasonable prior notice and subject to the safety rules and regulations of Developer, but no more than twice annually, Developer will provide Customer and its authorized agents, employees and inspectors with reasonable access to the Solar Facility: (i) for the purpose of reading or testing metering; and (ii) as necessary to witness any required capacity tests necessary to determine the amount of capacity associated with the Solar Facility. Upon reasonable notice to Developer, Developer shall provide Customer with reasonable access to the Solar Facility so that Customer may provide tours of the Facility.

7.3 Roof Warranty. The roof(s) at the Premises shall be free from leaks or other unreasonable damage, excepting usual wear and tear, resulting from installation of the Solar Facility for a period of six (6) months from the date of Commercial Operation. Developer will use commercially reasonable means to ensure that any manufacturer roof warranties that may be active are maintained throughout the installation.

7.4 Disclaimer of Warranties with Respect to Solar Facility. **DEVELOPER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT REGARDING THE SOLAR FACILITY AND ITS ABILITY TO GENERATE ELECTRICITY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

ARTICLE 8

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

8.1 Mutual Representations and Warranties Each Party warrants and represents to the other that:

8.1.1 It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;

8.1.2 Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational documents, and this Agreement has been duly executed and delivered by the signatories so authorized and constitutes its legal, valid, and binding obligation;

8.1.3 Its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected;

8.1.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, which would materially and adversely affect its ability to perform hereunder;

8.1.5 The information in all documents furnished, or to be furnished by it to the other Party is true and accurate, and does not fail to include any statement of a material fact, the omission of which would be misleading; and

ARTICLE 9

DEFAULT AND TERMINATION

9.1 Events of Default. Each of the following events or conditions shall constitute an “Event of Default”:

9.1.1 Any failure by a Party to pay to the other any sum due hereunder within ten (10) days after the due date specified herein for such payment;

9.1.2 Any representation or warranty furnished by a Party in this Agreement that was false or misleading in any material respect when made;

9.1.3 Any failure by a Party to perform or comply with any material term or covenant contained herein, provided that such failure continues for thirty (30) days after written notice to such Party by the other Party of such nonperformance, provided, however, that if such cure cannot be effected in such thirty (30) days, the nonperforming Party shall not be in default if it shall have commenced a cure within such thirty (30) day period and continues diligent pursuit of a cure until completion thereof; and

9.1.4 The inability of a Party to generally pay its debts, the filing of a bankruptcy petition, whether by a Party or by its creditors against such Party, or an involuntary assignment for the benefit of all creditors of the liquidation of a Party.

9.2 Customer Event of Default. Each of the following events or conditions shall constitute an “Event of Default” by Customer:

9.2.1 Customer’s refusal or failure to sign authorizations reasonably required by Developer to obtain any Incentive contemplated in Section 4.1 above (Identification and Application for Incentives);

9.2.2 Customer’s refusal or failure to sign or comply with any material term of the approved interconnection agreement required by the Local Utility for interconnection of the Solar Facility; and

9.2.3 Customer’s refusal or failure to sign or comply with any material term of any Applicable Law, including, without limitation, zoning, permitting or safety regulations.

9.3 Termination of Agreement. If any Event of Default has occurred, the non-defaulting Party may, upon prior written notice to the defaulting Party, terminate this Agreement on the date specified in the notice. In addition, Developer may terminate this Agreement on thirty (30) days’ written notice to Customer, without further liability, if, prior to the Commercial Operation date, any of the following occur:

9.3.1 Developer, in its sole discretion, determines that the Solar Facility cannot be built as planned or that its construction and operation would not be economically viable for Developer, including Developer’s determination that the installation of the Solar Facility is not economically viable as a result of the need to comply with any Environmental Laws or permitting condition;

9.3.2 Developer’s inability to obtain or maintain (i) any Approval, (ii) any required interconnection approval from the Local Utility; or

9.3.3 Either Party’s inability to reasonably procure any required insurances that may be necessary to protect Developer’s interest.

9.4 Pursuit of Remedies. Upon the occurrence of any Event of Default or termination of this Agreement as a result of an Event of Default, the non-defaulting Party may, subject to any limitation of liability contained herein, pursue any and all remedies available to it at law or in equity. Without limitation of the foregoing, if an Event of Default of Customer shall occur, Developer may terminate this Agreement and, if permitted by the Local Utility, sell Electricity from the Solar Facility to any party under terms and conditions acceptable to Developer in its sole and absolute discretion. Customer shall cooperate with Developer in appropriately amending the Site Lease, any interconnection documentation, this Agreement, and any other documentation to permit such sale to third parties. Developer may recover from Customer all of its out-of-pocket costs and expenses and Losses (“Damages”) incurred by Developer as a result of such termination. “Damages” shall include, without limitation: (i) the difference between the revenues projected to be received by Developer from the sale of Electricity for the remainder of the Term and the revenues that would have been received by Developer from Customer for the remainder of the Term; (ii) an amount equal to the lost revenues, if any, Developer would have received from the sale of RECs during the remainder of the Term (including, without limitation, the forfeiture of any fiscal credits or rebate amount paid to Developer); (iii) if applicable, the cost of dismantling and removing the Solar Facility to another location; and (iv) an amount equal to the recaptured solar investment tax credits and new market tax credits, if any, plus associated penalties and interests arising from such recapture. For purposes of calculating lost revenues from Electricity and REC sales for the remainder of the Term pursuant to the immediately preceding sentence, it shall be assumed that the electricity sales revenues and REC sales revenue for the remainder of the Term would have been the same as the average of the Electricity sales revenue and REC sales revenue for each of the years prior to the date on which the default occurs escalating to future dates at the Interest Rate. Market prices shall be based upon quotes from bona fide independent third-party offer or prices as are available in the market for equivalent quantities of products for the remainder of the Term. Developer shall provide Customer with written support of its derivation of proposed Damages. Customer acknowledges and agrees that the measure of damages set forth above constitutes a reasonable estimation of actual damages that would be incurred by Developer and constitutes reasonable liquidated damages and does not constitute a penalty.

ARTICLE 10 INDEMNIFICATION / LIABILITY

10.1 Customer’s Right to Indemnification. Developer shall indemnify Customer from and against any and all Losses that are attributable to: (a) any failure of Developer’s representations or warranties in this Agreement to be true when made; and (b) any third party claims, demands and actions based upon or arising out of the negligence and/or willful misconduct of Developer and its employees and agents in the performance of this Agreement.

10.2 Developer’s Right to Indemnification. Customer shall indemnify Developer, BSS, and Developer Related Persons from and against any and all Losses that are attributable to: (a) any failure of Customer’s representations or warranties in this Agreement to be true when made; and (b) any third party claims, demands and actions based upon or arising out of the negligence and/or willful misconduct of Customer and its employees and agents in the performance of this Agreement.

10.3 Procedure. If any person indemnified under Section 10.1 or 10.2 above (an “Indemnified Person”) seeks indemnification thereunder for a Loss that is asserted against it, such Indemnified Person shall give prompt written notice of such Loss to the Party from which it seeks indemnification (the “Indemnifying Party”), stating the nature and basis of the Claim and, to the extent known, the actual or estimated Losses claimed thereby. The failure to give such notice, however, will not affect the obligation of the Indemnifying Party to provide indemnification in accordance with the provisions of this Article 10 unless, and only to the extent that, such Indemnifying Party is actually prejudiced by such failure.

10.3.1 If an Indemnified Person is made the subject of a Proceeding for which an Indemnifying Party may have an indemnification obligation under Section 10.1 or 10.2, the Indemnifying Party shall have the right and the duty, at its sole cost and expense, to defend such Proceeding in the name or on behalf of the Indemnified Person. In connection with any such Proceeding, the Indemnifying Party and the Indemnified Person shall render to each other such assistance as may reasonably be required in order to ensure the proper and adequate defense of such Proceeding.

10.3.2 Notwithstanding the foregoing, an Indemnified Person shall have the right (following notice to the Indemnifying Party) to retain its own counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if (i) representation of such Indemnified Person by the counsel retained by the Indemnifying Party would be inappropriate because of actual or potential differing interests between such Indemnified Person and the Indemnifying Party; (ii) the Indemnifying Party shall have elected in writing, or failed, to employ counsel to defend such Proceeding; (iii) the Indemnifying Party shall fail to prosecute such defense with reasonable diligence; or (iv) the Indemnified Person shall have been advised by counsel chosen by it that there may be one or more legal defenses available to such Indemnified Person that are different from or additional to those available to the Indemnifying Party in such Proceeding. If the immediately-preceding sentence is inapplicable (or if the Indemnified Person waives its right thereunder), the Indemnified Person shall have the right to employ separate counsel at its own cost and expense in the Proceeding and to consult with the Indemnifying Party regarding the defense thereof; provided that, except as otherwise provided below, the Indemnifying Party shall at all times control such defense of such Proceeding.

10.3.3 No settlement of any Loss or Proceeding may be made by the Indemnifying Party without the Indemnified Person’s consent; provided that such consent shall not be necessary if the settlement results in an unconditional release of the Indemnified Person without the admission by the Indemnified Person of guilt, complicity, responsibility, or culpability. An Indemnifying Party shall not be liable for any settlement of any Loss or Proceeding without its consent.

10.3.4 Any Indemnified Person that seeks Indemnification under Section 10.1 or 10.2 for a Loss that is not attributable to a Proceeding shall notify the Indemnifying Party, stating the nature and basis of the Loss and, to the extent known, the actual or estimated amount thereof. The Indemnifying Party shall pay the amount of such Loss, as specified in such notice, in the manner described in Section 10.4.

10.4 Payments. Upon a determination that an Indemnified Party is entitled to Indemnification under Section 10.1 or 10.2 (by admission of the Indemnifying Party, agreement of the Indemnifying Party and Indemnified Person, or completion of the procedures set forth in Section 10.3), the Indemnifying Party shall pay to the Indemnified Person, within ten (10) days after such determination, the amount of the Loss Indemnified thereby. Upon the payment in full of any such Loss, the Indemnifying Party making such payment shall be subrogated to the rights of the Indemnified Person against any other Person with respect to the subject matter of such Loss and of any Claim or Proceeding relating thereto.

10.5 Waiver of Consequential Damages. Neither Party shall be liable hereunder for any special, incidental, indirect, punitive or consequential damages arising out of, or in connection with, this Agreement or such Party's performance of its obligations hereunder, including, but not limited to, loss of profits or revenue, lost business opportunities, cost of capital or cost of replacement services. Notwithstanding anything herein, any amount specified as payable by Customer to Developer upon the termination of this Agreement pursuant to Section 9.4 shall not be deemed consequential damages.

10.6 Disclaimer of Warranties with Respect to Solar Facility. To the maximum extent permitted by law, Developer's liability on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from the Agreement or from the performance or breach thereof shall in no case exceed the amount Customer has paid Developer under this Agreement.

ARTICLE 11 INSURANCE

11.1 Developer Insurance. Developer shall obtain, maintain and keep in force during the Term, including any extension thereof, at least the following types and amounts of insurance:

11.1.1 Workers' compensation and disability insurance, if applicable, in accordance with New York State law;

11.1.2 Commercial general liability insurance for bodily injury, death and property damage claims (including risk of physical loss or damage to the Solar Facility), with limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate, which shall include, without limitation, coverage for contractual liability, personal injury liability, explosion and collapse hazard liability, and products and completed operations liability; and

11.1.3 Insurance covering "all risks" of physical loss or damage to the Solar Facility and against such other risks and perils as are customarily insured against by others in the state in which the Property is located using facilities similar to the Solar Facility.

11.2 Customer Insurance. Customer shall obtain, maintain and keep in force during the Term, including any extension thereof (unless some other period of coverage is specified herein), at least the following types and amounts of insurance:

11.2.1 Commercial general liability insurance, on an occurrence basis against claims for bodily injury, death, and property damage, providing coverage for property damage and personal injury occurring at or in the vicinity of the Property and in connection with this Agreement with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate;

11.2.2 Insurance covering “all risks” of physical loss or damage to the Property and against such other risks and perils as are customarily insured against by others in the state in which the Property is located using facilities similar to the Property; and

11.2.3 Any and all insurance required under any interconnection agreement with the Local Utility.

11.3 Occurrence Policies/Additional Insureds. Each of the policies of insurance maintained by Developer and Customer in accordance with the foregoing provisions shall be occurrence rather than claims-made policies. Developer shall name Customer as an additional insured on the insurance policies required under this Agreement as applicable. Customer shall name Developer and BSS as additional insureds on the insurance policies required under this Agreement, as applicable. The coverage available to Developer and Customer as additional insureds under the insurance policies required under this Agreement shall be on a primary basis.

11.4 Evidence of Insurance. Upon execution of this Agreement and annually thereafter, Developer shall deliver to Customer and Customer shall deliver to Developer certificates of insurance evidencing the existence of insurance required hereunder. The certificates of insurance shall provide that the relevant insurance may not be canceled without thirty (30) days prior written notice to the other Party. Promptly upon written request of the other Party, Developer or Customer, as the case may be, shall deliver to the requesting Party copies of the entire insurance policies required under this Agreement for inspection and review.

11.5 Waiver of Subrogation. All insurance policies maintained by Developer and Customer pursuant to this Article 11 (Insurance) shall expressly waive any right on the part of any insurer to assert any claims against Customer, in the case of Developer policies, and against Developer, in the case of Customer policies. The Parties agree that all policies will include such waiver clause or endorsement.

ARTICLE 12 FORCE MAJEURE

12.1 Relief Due to Force Majeure. Except with respect to the obligation to pay money in a timely manner for liabilities already incurred or accrued, each Party shall be excused from performance hereunder and shall not be considered to be in default or be liable in damages or otherwise with respect to any obligation hereunder, if and to the extent that such Party’s failure of, or delay in, performance is due to the occurrence of an event of Force Majeure.

12.2 Definition of Force Majeure. An event of “Force Majeure” means, with respect to a Party, any event, occurrence, condition or imminent threat thereof which is beyond the reasonable control of such Party and prevents the performance of such Party’s obligation under this Agreement, but in no event shall an event, occurrence or condition caused by the negligence, bad faith or willful misconduct of a Party claiming Force Majeure constitute Force Majeure. Events of Force Majeure include, but are not limited to, acts of God; sudden action of elements; strikes, lockouts or other industrial or labor disturbances; acts of the public enemy or acts of terrorism; wars; epidemics; pandemics; fires; explosions; lightning; breakage, accident or freezing of machinery that could not have been reasonably anticipated; or any other cause, whether of the kind enumerated above or otherwise, so long as the cause is beyond the reasonable control and without the fault or negligence of the Party claiming Force Majeure. Where the performance of either Party is prevented or delayed by actions or inactions of any supplier or contractor to such Party, such prevented or delayed performance shall be an event of Force Majeure hereunder only if the supplier’s or contractor’s performance is prevented or delayed by circumstances that would constitute an event of Force Majeure hereunder.

12.3 Termination of Agreement. If a Force Majeure Event continues for at least ninety (90) days, either Party may terminate this Agreement by written notice to the other.

12.4 Notice and Mitigation Obligations. The Party affected by an event of Force Majeure shall promptly notify the other Party in writing of the occurrence of such event. Such notice shall be accompanied by any information reasonably available regarding the nature and anticipated duration of such event of Force Majeure. The non-performing Party shall use reasonable commercial efforts to continue to perform its obligations hereunder and to overcome the effects of the event of Force Majeure. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the event of Force Majeure.

12.5 End of Force Majeure Event. The affected Party shall provide the other Party with prompt notice of the cessation of an event of the Force Majeure and shall promptly resume performance hereunder.

12.6 No Extension. In no event will Force Majeure extend this Power Purchase Agreement beyond its Term.

ARTICLE 13 ASSIGNMENT / FINANCING

13.1 Assignment. Neither Party shall sell, transfer or assign this Agreement or any interest therein without the prior written consent of the other Party; provided, however, that without the prior consent of Customer, Developer may assign this Agreement to an Affiliate of Developer, or as a result of a sale, transfer, or reorganization of Developer as an entity, or to a Special Purpose Entity treated as the operating company for the Project, or to an authorized third party. Where required, a Party's consent to an assignment shall not be unreasonably withheld, conditioned or delayed. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

13.2 Financing. Customer acknowledges that Developer may be financing a part or all of its capital requirements for the installation of the Solar Facility and its operation and maintenance with a third party (each a "Financing Party," and collectively the "Financing Parties"). Developer may choose the manner of financing the Solar Facility and the Financing Parties in Developer's sole discretion. The transaction costs and repayment of any such Developer financing shall be borne entirely by Developer.

13.2.1 Developer may assign and transfer as security to any party providing financing to Developer all of the interest, rights and remedies of Developer in, to and with respect to this Agreement, the Site Lease Agreement or with respect to the Solar Facility. Any such assignment will be made for collateral security purposes only and will not release or discharge Developer from any obligations it may have pursuant to this Agreement.

13.2.2 Developer may authorize and empower the Financing Party to assert, either directly or on behalf of the assigning party, any claims that Developer may have against Customer under this Agreement and make, constitute, and appoint the Financing Party as the true and lawful attorney and agent-in-fact of Developer for the purpose of enabling the Financing Party to assert and collect such claims.

13.2.3 Upon any acquisition of Developer's rights by a Financing Party or an operator designated pursuant to the provisions of any Developer financing agreement, and upon compliance by such Developer Financing Party or designated operator with Developer obligations in connection with its rights of cure as contained in such financing agreement, Customer shall accept such Developer Financing Party or designated operator in place of Developer for all purposes under or in connection with this Agreement for the remainder of the Term.

13.3 Customer's Cooperation in respect of Developer Financing. In order to facilitate Developer's financing, including Developer's pledge or collateral assignment of its rights under this Agreement and/or grant of a security interest in the Solar Facility, Customer agrees as follows:

13.3.1 Customer acknowledges that it has been advised that part of the collateral securing financial accommodations of Developer may be the granting of a first priority or purchase money security interest ("Security Interest") in the Solar Facility to a financing party to be perfected by a filing under the Uniform Commercial Code ("UCC"). Customer consents to such filings.

13.3.2 Customer shall provide all reasonable assistance to Developer to help Developer consummate financing of the Solar Facility by any Financing Party. Customer shall use its best efforts to obtain any lien waivers, execution of commercial law forms and other documents as reasonably needed by Developer or any Financing Party to secure such Financing Party's collateral position in the Solar Facility or in Developer's rights under this Agreement.

ARTICLE 14 GOVERNING LAW

14.1 Governing Law; Forum; Venue; WAIVER OF JURY TRIAL. This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of New York without regard to its conflicts of law principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be brought in New York State Supreme Court in the County of Erie or the Federal district court of the Western District of New York, which shall have exclusive jurisdiction over every party in connection with any such claim or controversy. The Parties hereby consent to such court's jurisdiction and agree to waive any and all rights to change venue. **The Parties hereby waive all rights to trial by jury regarding any claim or cause of action arising under or in any way related to this Agreement.**

ARTICLE 15 CHANGE OF LAW / REGULATORY CHANGE

15.1 Change of Law. This Agreement may be cancelled by Developer with written notice to Customer at least 30 days prior to cancellation due to action of a Governmental Authority. Such actions include but are not limited to changes in laws or regulations affecting the subject matter of this Agreement; present or future orders of any Governmental Authority; and non-issuance of any required permit or consent by any Governmental Authority or Local Utility, including approvals of interconnection requests or agreements.

Should changes in laws or regulations result in an increase in Developer's costs to operate and/or maintain the Solar Facility, Developer will promptly submit in writing to Customer (i) the applicable change and how it increases developers costs; and (ii) the adjustment to the rates for Electricity to reflect such cost increases.

ARTICLE 16 PUBLICITY

16.1 Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other, not to be unreasonably withheld, conditioned or delayed.

16.2 Privacy. Customer agrees to permit Developer to request data from the Local Utility regarding Customer's account and electricity usage for the purpose of determining Customer's electricity usage characteristics and otherwise for the provision of services to you under this Agreement. Developer will not release this information to any entity unaffiliated with Developer, except to the Local Utility, without Customer's consent. Developer is authorized to retain Customer's data for the duration of this Agreement and twelve (12) months thereafter.

16.3 Confidential Information. 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. Notwithstanding the foregoing, the Parties may, and shall, disclose any information to any Governmental Authority under Applicable Laws. If a receiving Party is required by validly issued subpoena or similar document to disclose any Confidential Information provided by the disclosing Party, the receiving Party may make disclosure as required by law, but the receiving Party shall prior to making any disclosure notify the disclosing Party in writing 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.

Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section and agrees that the provisions of this Section 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.

ARTICLE 17 CUSTOMER RIGHTS

17.1 Customer may have rights under (i) the New York Home Energy Fair Practices Act (HEFPA), which governs the provisions of gas, electric and steam service to residential customers, and (ii) the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), promulgated by the State of New York Public Service Commission. If Customer has inquiries or complaints that Developer is unable to resolve, Customer has the right to call the Department of Public Service Helpline at 1-800-342-3377. Customer may file a complaint on the Helpline or by following the instructions at <http://www.dps.ny.gov/complaints.html>.

ARTICLE 18 MISCELLANEOUS

18.1 Notice; Effectiveness. All notices, requests, demands, claims, consents and other communications or deliveries hereunder shall be in writing and (a) delivered in person or by overnight courier, (b) sent by facsimile transmission or electronic mail to the Party representative's email address listed below, (provided a copy is also sent by overnight courier) or (c) mailed, registered or certified first class mail, postage prepaid, return receipt requested, to the appropriate Party at the following addresses or such other address as the Parties set forth above by notice given as provided herein. Such notices shall be effective (i) if delivered in person or by overnight courier, upon actual receipt by the intended recipient, (ii) if sent by facsimile transmission or electronic mail, when the sender receives confirmation that such notice was received at the facsimile number of the addressee, (provided a copy is also sent by overnight courier) or (iii) if mailed, upon the date of delivery as shown by the return receipt.

To Developer:

Buffalo Power Development, LLC
1212 Abbott Road, Suite B
Buffalo, NY 14225

Attention: Tyler Uebelhoer, President
Email: tyler@buffalopowerdevelopment.com

To Customer:

<<Customer Name>>
<<Project Address>>
<<City>>, <<State>> <<Zip>>
Attention: <<Contact Name>>, <<Contact Title>>
Email: <<Contact Email>>

18.2 Customer's Representative. Customer's representative shall be Customer's signatory to this Agreement or such other person as may be designated in writing by Customer ("Customer's Representative"). Customer's Representative: (a) shall be fully acquainted with the project, and the terms and conditions of this Agreement; (b) agrees to furnish all information, review, services and access to Developer so as not to delay Developer's work or hinder the performance of Developer's services hereunder; and (c) shall have authority to bind Customer in all matters requiring Customer's approval, authorization and written notice. If Customer changes the Customer Representative or his or her authority, as described above, Customer shall notify Developer in writing no less than ten (10) business days in advance of any such change.

18.3 No Waiver. The failure of Developer or Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Developer or Customer.

18.4 Severability. In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable or unlawful.

18.5 Exculpatory Provision. All covenants, stipulations, promises, agreements and obligations of the Parties contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the applicable Party and not of any member, director, officer, employee or agent of such Party in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of such Party.

18.6 Complete Agreement. This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between the Parties and supersedes and terminates all prior or contemporaneous arrangements, understandings and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may not be amended, modified or revised except by a written Agreement signed by Customer and Developer.

18.7 Independent Capacity of Developer. Developer shall perform its duties hereunder as an independent contractor and not as an employee of Customer. Neither Developer nor any agent, employee, contractor or subcontractor of Developer shall be or shall be deemed to be an agent or employee of Customer.

18.8 Survival. The obligations under Section 9.2 (Pursuit of Remedies), Article 10 (Indemnification/Liability), Article 14 (Governing Law), Article 15 (Publicity/Privacy) and, pursuant to other provisions of this Agreement which, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement.

18.9 Captions/Recitals/Exhibits. The captions herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed to be defining or limiting in any way the scope or intent of the provisions hereof. This Agreement's Recitals and Exhibits are material to this Agreement and incorporated herein by reference.

18.10 Construction. The Parties agree that the rule of construction that ambiguities in a contract are to be construed against the party that drafted the contract shall not apply to the interpretation of this Agreement.

18.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties may deliver executed counterparts of this Agreement by electronic copy or via facsimile, and such electronic copy or facsimile signature(s) shall be valid and binding as if original documents were delivered.

[Remainder of page intentionally left blank. Signature page follows.]

[Signature page to Power Purchase Agreement]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

Developer:
Buffalo Power Development, LLC

Customer:
<<Customer Name>>

By: _____

By: _____

Name: Tyler Uebelhoer
Title: President
Date: _____

Name: <<Contact Name>>
Title: <<Contact Title>>
Date: _____

ATTACHMENT A
[Property Description]

ATTACHMENT B

Description of Solar Installation Site

See Exhibit C of the Site Lease

ATTACHMENT C

Description of the Solar Facility

ATTACHMENT D

Customer Approvals

ATTACHMENT E

Price of Electricity Sold

1. Electricity Pricing.

Year 1 Price: \$0.0900/kWh.

Escalation Rate: 1.5% applied annually at the anniversary of the Commercial Operation Date

Term: 25 Years

Customer's electricity price for Year 1 will be \$0.0900/kWh. This price shall be adjusted on each anniversary of the Commercial Operation Date for the Term of this Agreement by multiplying the price for the prior year by the Escalation Rate specified above.

Year	Electricity Price (\$ / kWh)
1	\$0.0900
2	\$0.0914
3	\$0.0927
4	\$0.0941
5	\$0.0955
6	\$0.0970
7	\$0.0984
8	\$0.0999
9	\$0.1014
10	\$0.1029
11	\$0.1044
12	\$0.1060
13	\$0.1076
14	\$0.1092
15	\$0.1109
16	\$0.1125
17	\$0.1142
18	\$0.1159
19	\$0.1177
20	\$0.1194
21	\$0.1212
22	\$0.1230
23	\$0.1249
24	\$0.1268
25	\$0.1287

First year anniversary will be 12 full months after Commercial Operation Date

ATTACHMENT F

Utility Tariff attached on next page