

POWER PURCHASE AGREEMENT

Dated as of

[______, 2018]

between

and

Monolith Solar Associates, LLC

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (" Agreement ") is entered into as of, 2017 (" Effe between Monolith Solar Associates, LLC a New York limited liability company (" Provider "), and(" Host ").	ective Date") by and
WHEREAS, Host is the owner of the property located at	and
desires to make a portion of such property available to Provider for the construction, operation and maintenance electric generating project, and to purchase from Provider the electric energy produced by the project for use uncentive Program PON 2112.	•
WHEREAS, Provider desires to develop, design, construct, own and operate the Project located on Host to Host the electric energy produced by the Project.	st's property, and sell

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. DEFINITIONS.

"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over the Parties or their property or the Project, enforceable at law or in equity.

"Applicable Solar Program" means the solar program defined in Exhibit C.

"<u>Electric Service Provider</u>" means any person, including the Local Electric Utility, authorized by the State of New York to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

"<u>Electricity</u>" means all usable electric energy and power, measured in kilowatt-hours ("kWh") and kilowatts ("kW"), generated by the project and delivered to the Host at the point of connection, and metered by an electric meter approved by the New York State Public Service Commission in accordance with Public Service Law § 67, owned and installed by Provider.

"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

"Equipment" means a photovoltaic system with a rated capacity of not more than two thousand kilowatts that is manufactured, installed, and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, and that is operated in compliance with any standards and requirements established under Section 66-j of the New York Public Service Law.

"Financing Party" means a Project Lessor or Lender.

"Installer" means the person designated by Provider to install the Project on the Premises.

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and if required, interconnection services to Host at the Premises.

"Operations Period" means the period of time the Project is in operation, commencing from the Commercial Operations Date.

"Parties" means both the Host and Provider.

"Party" means either Host or Provider, as applicable.

"Project" means the integrated system for the generation of Electricity from solar energy consisting of the Equipment and associated equipment installed by Provider on the Premises in accordance with this Agreement.

"Premises" the portions of the Site where the Project will be located.

"Site" the real property which the Project will be located.

"<u>Tax Attributes</u>" means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

2. TERM.

- (a) This Agreement shall consist of an Initial Period and an Operations Date.
- (b) <u>Initial Period.</u> The Initial Period will begin on the Effective Date set forth above and will terminate on the Operation Date or the date the Agreement is terminated.
- (c) <u>Operations Date</u>. The Operation Date means the date, which shall be specified by Provider to Host when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility. The term of this Agreement, as to the Project designated, shall commence on the Operation Date for the Project, and shall continue for twenty (20) years (the "Term").
- (d) Any notice of termination given by either party under this Agreement or under any Supplement annexed hereto may not be revoked without the written consent of the other party.

3. ACCESS RIGHTS.

- (a) <u>Access Specifications.</u> Host hereby grants Provider and its designees (including Installer and persons responsible for implementing the Applicable Solar Program) access to the Premises, for the Term, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and removing the Project, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access Rights with respect to the Site include without limitation:
 - (i) <u>Vehicular & Pedestrian Access.</u> Reasonable vehicular and pedestrian access across the Site to the Premises for purposes of designing, installing, operating, maintaining, repairing and removing the Project. Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.
 - (ii) <u>Transmission Lines & Communication Cables.</u> The right to locate transmission lines and communications cables across the Site.
 - (iii) <u>Storage.</u> Adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation, and maintenance of the Project. Provider shall be responsible for providing shelter and security for stored items during construction and installation.
 - (iv) <u>Utilities.</u> Water, drainage, electrical, and ethernet connections on the Premises for use by Provider in installing, operating and maintaining the Project.
- (c) Remote Monitoring. Host will provide an internet portal or equipment by means of which Provider will communicate data from the solar monitoring system. Host will install a Cat5e Ethernet cable for this communication process. The Cat5e cable must be installed from the location of the Host's internet source to the location of the solar monitoring device, as well as, from the internet source location to the location of the monitor which will display the data being recorded. If a video monitor has been included in the installation of the system, the location of this video monitor, will be chosen by the Host. The Host must also provide the necessary 120Volt outlets for the associated monitor, and network appliance needed to access the data recorded by the solar monitoring device. The outlet must be located within three (3) feet of the location of the monitor.

4. PLANNING, INSTALLATION AND OPERATION OF PROJECT.

(a) <u>Site Assessment and Planning.</u> During the Initial Period, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Local Electric Utility; to

make any applications to the appropriate Public Utilities Commission or other agencies for receipt of payments for the Project under the Applicable Solar Program; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

- (b) Termination of Development Activities. At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises, for any reason, in its sole discretion. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions, the indemnity obligations hereof, and the dispute resolution provisions hereof shall continue to apply notwithstanding the termination of this Agreement.
- (c) <u>Commencement of Construction, Modification of Design.</u> At any time during the Initial Period, upon at least ten (10) Business Days' notice to Host, Provider shall have the right to commence installing the Project on the Premises.
 - (i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit A attached hereto.
 - (ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibit A, without Host's approval.
- (d) <u>Contractors.</u> Provider may use contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Host. Provider shall advise Host of the Installer prior to commencement of the work on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities.
- (e) <u>Status Reports.</u> Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.
- (f) <u>Standard of Operation</u>. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all applicable laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(g) Maintenance and Repairs.

- (i) Host will at all times keep the Project in its sole possession and control. Host agrees to keep trees, bushes and hedges trimmed to keep the Project and the Equipment free of any obstructions. The Project shall not be moved from the location stated in the Exhibit A without prior written consent of Provider. Host will at no time perform maintenance or modifications on the Project. As the nature of high power systems is innately dangerous without proper training and experience, only Provider's employees or designated representatives shall be allowed to work in or around the Project. Any work, maintenance or other activity performed on the PV Project by other than Provider representatives is a breach of this Agreement.
- (ii) Provider shall, during the term of this Agreement, at its expense, keep the Project in good working order and condition and make all necessary adjustments, repairs and replacements thereto. Host shall not use or permit the Equipment to be used for any purpose for which in the opinion of the manufacturer, the Equipment is not designed or reasonably suitable.
- (iii) Provider may, during the term of this Agreement, at its own expense, enter into

and maintain in force a contract with the manufacturer or other qualified service organization covering at least prime maintenance of each item of Equipment. Such contract as to each item shall commence upon expiration of the warranty period, if any, relating to such items.

(iv) Host and Provider shall comply with all governmental laws, regulations and requirements, and all insurance requirements, if any, with respect to the use, maintenance and operation of the Project.

(h) Warranties.

- (i) Roof Warranty. For a period of six (6) months following the date of completion of installation of the Project, a warranty for any damage to the roof as a result of the installation of the Equipment will be granted by the Provider ("Roof Penetration Warranty Period"). If any failure to meet this Roof Warranty appears Roof Warranty Period, Provider will at is sole cost correct the failure by either repairing or replacing (at its option) the roof damage.
- (ii) Project Warranty. Provider warrants to the Host that Project shall be free from defects in material, workmanship and title; and that installation or other services shall be performed in a competent, diligent manner. The Project Warranty shall be for the Term of the Agreement ("Warranty Period"). If any failure to meet this warranty appears within the Warranty Period, Provider will, at is sole cost, correct the failure by reperforming any defective service and either repairing or replacing (at its option) any defective equipment or materials furnished for the Projects and any damage to the PV System caused by the defect. The warranty shall cover the full costs, including labor and repair or replacement of defective components or systems. The Provider may rely upon warranties provided by the vendors and manufacturers and other contractors. Host shall fully cooperate to assist the Provider in making claims under applicable warranties. No other warranties are provided. The warranties and remedies set forth herein are conditioned upon proper storage, installation, use, maintenance, and conformance with applicable recommendations of Provider. This warranty shall apply for the period specified unless the system and its components have been modified, damaged, altered, defaced, or repaired by anyone but the Provider. Provider does not warrant the Project against normal wear and tear.
- (iii) The foregoing shall constitute the sole and exclusive remedy for all claims based on failure of, or defect in, goods or services sold hereunder, whether the failure or defect arises before or during the applicable Warranty Periods, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranty is exclusive and is in lieu of all other warranties whether written, oral, implied or statutory. AS TO ALL GOODS SOLD, NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. Upon the expiration of the applicable Warranty Period, all such liability shall terminate
- (i) <u>Site Security.</u> Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations.
- (j) <u>System Shut Down.</u> Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown.

5. SALE OF ELECTRIC ENERGY.

- (a) <u>Sale of Electricity.</u> Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Project, whether or not Host is able to use all such electric energy. Host shall only be responsible to pay for the energy/power generated by the system. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery.
- (b) <u>Delivery of Electricity.</u> The Electricity from the Project shall be delivered from Provider to Host and otherwise in compliance with all requirements of the Local Electric Utility.
 - (c) Not Used.

(d) <u>Meter Testing.</u> Provider shall install one or more meter(s) at the Project, as Provider deems appropriate, to measure the output of the Project at the Point of Delivery. Provider will measure the actual amount of Electricity delivered to Host by the Project. Host will provide Provider access to the Project at all times for metering. Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards.

6. PAYMENT AND BILLING.

- (a) <u>Rates.</u> Host shall pay Provider for electricity produced by the Project at the rates set forth in <u>Exhibit</u> B attached hereto.
- (b) All NYSERDA incentives remain property of Provider and are passed through to Host as a discount in billable rates as detailed in <u>Exhibit B</u>.
- (c) <u>Billing.</u> Host shall pay for the electricity generated by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.
- (d) <u>Invoice Delivery.</u> Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed; (iii) transmitted by facsimile; or (iv) transmitted by email.
- (e) <u>Payment.</u> Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by mail in the invoice or in a written notice delivered to Host. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the rate of one and one-half percent (1.5%) per month, not to exceed the maximum interest rate allowable by law. For customers not enrolled in automatic payments, payments will include an eight (\$8) dollar administration fee. Returned checks will require a \$35.00 returned check fee.

7. SUPPLEMENTAL POWER, AND NET METERING.

- (a) <u>Back-up and Supplemental Electricity.</u> Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.
- (b) Net Metering & Utility Credits. At any time that electric production from the Project is greater than Host's requirements at such time, Host shall nevertheless pay Provider for all of the electricity produced by the Project at the rates and in the manner provided in this Agreement. Any power in excess of Host's requirements will be delivered to the Local Electric Utility through the Point of Delivery and Host shall receive any credits or payments from the Local Electric Utility under net metering.
- (c) <u>Interconnection.</u> Provider shall be responsible for arranging the interconnection of the Project with Host's Local Electric Utility in a manner which includes bi-directional or "net metering".
- (d) <u>Applicable Solar Program Incentives.</u> Provider shall receive all payments available under any Applicable Solar Program. Host shall provide reasonable assistance to Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the Applicable Solar Program or assigning payments from the Applicable Solar Program to Provider. If Host receives any payments under the Applicable Solar Program or other programs in respect of the Project, it shall promptly pay them over to Provider.
- (e) <u>Ownership of Tax Attributes.</u> Provider shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider.
- (f) <u>Environmental Attributes.</u> Provider shall be the owner of any Environmental Attributes which may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider.
- (g) <u>Capacity & Ancillary Services.</u> Provider shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Project. Host shall provide reasonable assistance

to Provider in preparing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.

- (h) <u>No Resale of Electricity.</u> The electricity purchased by Host from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Provider, which approval shall not be unreasonably withheld, and Host shall not take any action which would cause Host or Provider to become a utility or public service company.
- (i) <u>Provider Is Not A Utility.</u> Neither Party shall assert that Provider is an electric utility, public service company or electric corporation as defined in New York Public Service Law § 2, or any similar entity that has a duty to provide service, is subject to rate regulation as a result of Provider's obligations or performance under this Agreement.

8. PERMITS, OWNERSHIP OF PROJECT, LIENS, MORTGAGES

- (a) <u>Permits.</u> Provider shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.
- (b) <u>System Ownership.</u> Provider shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.
- (c) <u>Liens.</u> 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 (collectively referred to as "<u>Liens</u>" and each, individually, a "<u>Lien</u>") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, 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.
- (d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent from such lienholder, in form and substance reasonably acceptable to Financing Party, stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filling of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's rights in the Project and the Access Rights.

9. PURCHASE OPTIONS; REMOVAL AT END OF TERM.

(a) Option to Extend. Host shall have the option to extend the current Agreement for an additional five (5) year term. This option may be executed at the end of each new term for the useful life of the Project.

- End of Term Purchase Option. Host shall have the right to purchase the Project from Provider at the expiration of the Operations Period at the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Following receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project determined in a commercially reasonable manner at the end of the Term. Fair Market Value means the price that would be paid in an arm's length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. In the event Host disputes such stated Fair Market Value within thirty (30 days of receipt of such appraisal from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar industry. Such appraiser shall, subject to applicable Internal Revenue Services processes and requirements, act in a commercially reasonable manner and in good faith to determine the Fair Market Value of the Project as of the applicable Purchase Date and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Host, if such appraisal results in a value equal or greater than the value provided by Provider.
- (c) <u>Transfer of Ownership.</u> Upon Host's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, or portions thereof, to Host.
- (d) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a) or 9(b), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.
- (e) <u>Decommissioning.</u> If Host does not exercise the option set forth in Section 9(b) above, then Provider, at its expense, shall promptly decommission and remove the Project following the expiration of the Operations Period. Provider shall not be obligated, however, to remove any support structures for the Project which are affixed to Host's structures or any below grade structures, including foundations and conduits, or any roads. Host grants Provider and its representative's reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project. During decommissioning, Provider will comply with all Applicable Laws.
- (f) <u>No Survival of Purchase Option.</u> The options for Host to purchase the Project shall not survive the termination of this Agreement.

10. SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE.

- (a) <u>Host Requested Shutdown</u>. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider the sum of payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown.
- (b) <u>Provider Safety Shutdown</u>. In addition to the right of Provider to shut down the Project for maintenance, Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown.
- (c) <u>Project Relocation</u>. Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider in their sole discretion. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required

by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs.

- (d) <u>Premises Modification</u>. In the event that the Premises necessitates repairs or maintenance, Host shall give Provider at least fourteen (14) days written notice to remove all or a portion of the Project for a reasonable period of time, not to exceed thirty (30) days. At its own expense, Provider shall remove the Project or the obstructing portion of the Project as required by the Host for repair, maintenance, or improvement of the Premises. No such repair, maintenance, or improvement on Host's part shall interfere with the reinstallation of the Project.
- (e) <u>Premises Shutdown; Interconnection Deactivated</u>. In the event Premises are closed as a result of an event that is not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall nevertheless continue to pay Provider for all electricity produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider such that the Project is no longer able to produce electricity or transfer electricity to its respective Premises or to the Local Electric Utility, Host will pay Provider an amount equal to the sum of (A) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following such closure; (B) revenues that Provider would have received with respect to the Project under the Applicable Solar Program and any other assistance program with respect to electric energy that would have been produced following such closure.
- (f) <u>Sale of Site</u>. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider in their sole discretion, Host may be released from further obligations under this Agreement.

11. TAXES.

- (a) <u>Income Taxes.</u> Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider, as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.
- (b) <u>Sales Taxes.</u> Host shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.
- (c) <u>Property Taxes.</u> Host shall be responsible for all ad valorem personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon, except that Provider shall be responsible for ad valorem personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Project on the Site, Provider shall reimburse Host for such tax.

12. INSURANCE.

- (a) <u>Coverage</u>. Provider shall maintain the insurance coverage set forth below in full force and effect throughout the Term.
- (i) <u>General Liability</u>. Provider will have a minimum level of commercial general liability insurance for the term of the Agreement of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate.
- (ii) <u>Workers' Compensation.</u> Provider will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than \$100,000 for injury or death each accident.
- (iii) <u>Business Auto.</u> Provider will have not less than one million dollars (\$1,000,000) each accident for bodily injury and property damage, and one million dollars (\$1,000,000) in the aggregate.
 - (iv) Excess Liability. Provider will have a minimum level of excess liability insurance for the

term of the Agreement of five million dollars (\$5,000,000) for each occurrence.

- (b) <u>Applicable Solar Program Requirements.</u> Provider will also maintain the additional insurance requirements to satisfy the requirements of the Applicable Solar Program.
- (c) <u>Insurance Certificates.</u> Provider shall furnish current certificates indicating that the insurance required under this Section is being maintained.
- (d) <u>Certain Insurance Provisions</u>. Provider's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Provider's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

13. COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS.

- (a) <u>Cooperation.</u> The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.
- (b) <u>Host to Not Restrict Solar Access.</u> Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

14. PRESS RELEASES, MEDIA AND CONFIDENTIALITY.

- (a) <u>Press Releases.</u> The Parties acknowledge that they each desire to publicize information about this Agreement and the Project. The Parties therefore agree that each may make independent press releases about entering into this Agreement, the size and location of the Project, and the identity of the other Party, without the prior written consent of the other Party, so long as only Provider has the exclusive right to (i) claim that electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement. However, the terms of this Agreement and information about the Project other than that described above constitutes Confidential Information, as defined below, and is subject to the remaining provisions of this Section.
- (c) <u>Photograph Release and Website Linking</u>. Host agrees to allow Provider to use Host's logo, Project and location via video or photographic medium for use in advertising, press releases, websites or any other form of media before, during, and after installation of the Project. Once Provider has added Host's Project to Provider's website gallery, Host has the option to add a link on their website to Provider's website and in turn Provider will also add a link to their website.
- (c) <u>Confidential Information</u> means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, 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.
- (d) <u>Limits on Disclosure of Confidential Information.</u> Subject to the exceptions set forth below, 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. Notwithstanding the foregoing, the Parties may, and shall, disclose any information required to be disclosed under rules, regulations and contracts implementing the Applicable Solar Program or Tax Attributes required to be disclosed by any Governmental Authority under Applicable Law or pursuant to a validly issued subpoena or required filing.
- (e) <u>Permissible Disclosures.</u> If a receiving Party is required by Applicable 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 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.

(f) <u>Enforcement of Confidentiality Provisions.</u> 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. The provisions of this Section shall survive until three years after the effective date of any termination of this Agreement.

15. INDEMNIFICATION.

- (a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of Provider's (or its contractor's) negligence or willful misconduct; (ii) Provider's violation of Applicable Law; (iii) any failure to properly interconnect or comply with the procedures of the Local Electric Utility; or (iv) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or by any of Provider's employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.
- (b) <u>Host Indemnification.</u> Host shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees ("<u>Provider's Indemnified Parties</u>"), harmless from and against all Losses incurred by the Provider's Indemnified Parties to the extent arising from or out of (i) any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Host's Indemnified Parties; (ii) Host's violation of Applicable Law; or (iii) the presence, removal or remediation of any Hazardous Materials on the Site (other than any Hazardous Materials brought on to the Site by Provider's Indemnified Parties). Host shall not be obligated to indemnify Provider or any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.
- (c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.
- (d) <u>Defense of Claims.</u> The Indemnifying Party has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.
- (e) <u>Payments.</u> At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.
 - (f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

16. REPRESENTATIONS AND WARRANTIES.

- (a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:
- (i) <u>Organization</u>. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.
- (ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.
- (iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.
- (iv) <u>No Material Litigation</u>. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.
- (b) <u>Host Representations.</u> In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:
- (i) <u>Electric Usage</u>. Host has provided to Provider complete and correct records of its electric usage at the Site for the preceding one (1) year.
- (ii) <u>Condition of Premises.</u> Host has provided to Provider Host's complete and correct records of the physical condition of the Premises. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project is to be installed, are materially different from the information presented by Host, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

17. FORCE MAJEURE.

- (a) A Force Majeure Event means any act or event that prevents the affected Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.
- (b) <u>Excuse for Force Majeure Event.</u> Except as specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.
- (c) No Excuse for Payment for Prior Services. Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.

- (d) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section, (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions, the indemnity obligations hereof, and the dispute resolution provisions hereof shall continue to apply notwithstanding the termination of this Agreement.
- (e) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site. In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

18. CHANGE IN LAW.

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will promptly submit to Host a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs.

19. PROVIDER DEFAULT AND HOST REMEDIES.

- (a) <u>Provider Events of Default</u>. Provider shall be in default of this Agreement if any of the following ("<u>Provider Events of Default</u>") shall occur:
 - (i) <u>Misrepresentation.</u> Any representation or warranty by Provider under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within thirty (30) days after receipt of notice from Host identifying the defect.
 - (ii) <u>Abandonment During Installation.</u> After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.
 - (iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of governmental authority, or exercise of Provider's rights under this Agreement, or otherwise excused by the Force Majeure or other provisions of this Agreement; and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.
 - (iv) <u>Obligation Failure.</u> Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by Force Majeure Events, and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) one hundred twenty (120) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.
 - (v) <u>Insolvency.</u> Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law

relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) <u>Host Remedies.</u> Upon an Event of Default by Provider, provided that Host complies with its obligations and does not cure such Event of Default by Provider, Host may terminate this Agreement and pursue other remedies available at law or equity.

20. HOST DEFAULT AND PROVIDER REMEDIES.

- (a) <u>Host Events of Default</u>. Host shall be in default of this Agreement if any of the following ("<u>Host Events of Default</u>") shall occur:
 - (i) <u>Misrepresentation.</u> Any representation or warranty by Host hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within thirty (30) days after receipt of notice from Provider identifying the defect.
 - (ii) <u>Obstruction.</u> Host obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within ten (10) days of when such payment was due.
 - (iii) <u>Payment Failure.</u> Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within sixty (60) days after receipt of notice thereof from Provider.
 - (iv) <u>Obligation Failure.</u> Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by Force Majeure Events, and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.
 - (v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.
- (b) <u>Default Damages.</u> Upon an Event of Default by Host, Provider may sell electricity produced by the Project to persons other than Host, and recover from Host any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity.

21. LIMITATIONS ON DAMAGES.

To the maximum extent permitted by law, Provider'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 Host has paid Provider under this Agreement.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

22. DISPUTE RESOLUTION.

(a) <u>Negotiation Period.</u> 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 30 days after the date that a Party gives written notice of such Dispute to the other Party.

(b) <u>Mediation.</u> If, after negotiation, 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 whom they choose together. The mediator's fee and expenses shall be paid one-half by each Party.

(c) Arbitration of Disputes.

- (i) <u>Rules of Arbitration.</u> Any Dispute that is not settled to the mutual satisfaction of the Parties shall be settled by binding arbitration between the Parties conducted in Albany, New York, or such other location mutually agreeable to the Parties, and in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration.
- (ii) <u>Dispute Submission.</u> The Party initiating the Arbitration (the "**Submitting Party**") shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the "**Responding Party**"), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.
- (d) <u>Exceptions to Arbitration.</u> The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bona fide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.
- (e) <u>Survival of Arbitration Provisions.</u> The provisions of this Section shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

23. NOTICES.

<u>Delivery of Notices</u>. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile or (v) transmitted by email as follows:

If to Host:

Email: Phone: Fax:

If to Provider:

Monolith Solar Associates, LLC 16 Corporate Woods Blvd., Suite 1 Albany, NY 12211 Email: info@monolithsolar.com

Phone: (518) 444-2044 Fax: (518) 621-7061

- **24. DISCLOSURE STATEMENT.** For a summary of the terms contained in this Agreement, please see the Disclosure Statement in Exhibit D.
- 25. RESCINDING AGREEMENT WITHOUT PENALTY. You have the unrestricted right to rescind this Agreement without penalty or further obligation by calling the toll-free number provided in Article 26 within the (3) business days of receipt of the Agreement.

26. DATA SHARING AND PRIVACY POLICY.

- **A.** Host shall provide and shall ensure the Utility provides Provider electrical consumption history and other information, including, but not limited to, the following:
- 1. Your service address;

- 2. Your electric Utility account number;
- 3. Sales tax district used by the distribution Utility and whether the Utility identifies you as tax exempt;
- 4. Rate service class and subclass or rider by account and by meter, where applicable;
- 5. Electric load profile reference category or code, if not based on service class, whether your account is settled with the NYISO utilizing an actual 'hourly' or a 'class shape' methodology, or Installed Capacity (ICAP) tag, which indicates your peak electricity demand:
- 6. Your number of meters and meter numbers;
- 7. Whether you receive any special delivery or commodity "first through the meter" incentives, or incentives from the New York Power Authority;
- 8. Your Standard Industrial Classification (SIC) code (if applicable);
- 9. Your usage type (e.g., kWh), reporting period, and type of consumption (actual, estimated, or billed);
- 10. Whether your commodity service is currently provided by the utility;
- 11. Twelve (12) months, or the life of the account, whichever is less, of your data and, upon separate request by us, an additional twelve (12) months, or the life of the account, whichever is less, of your data, and, where applicable, demand information; if you have more than one meter associated with an account, the utility shall provide the applicable information, if available, for each meter; and
- 12. Electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs), and if requested in detail, an acceptable alternative format.
- B. Privacy Policy. We have privacy and security policies and processes in effect that are designed to keep your data confidential and secure. A summary of those policies and processes is attached as Exhibit E.
- C. Authorization to Release Utility Data. A form for authorizing us to receive your utility consumption and other data listed in Section 26(A) above is attached as Exhibit F.

QUESTIONS ABOUT BILLINGS OR OTHER INQUIRIES?

CALL (518-444-2044 LOCAL OR 1-855-MONOSUN TOLL FREE)

OUR CUSTOMER SERVICE CENTER IS OPEN MONDAY THROUGH FRIDAY EXCEPT HOLIDAYS (8 AM – 5PM)

27. RIGHTS UNDER THE NEW YORK HOME ENERGY FAIR PRACTICES ACT (HEFPA).

You are hereby notified that you may have certain rights under the New York Home Energy Fair Practices Act (HEFPA).

24. MISCELLANEOUS.

- (a) <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of New York, including principles of good faith and fair dealing that will apply to all dealings under this Agreement.
- (b) <u>Rules of Interpretation</u>. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The

word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

- (c) <u>Severability</u>. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision.
- (d) <u>Amendment and Waiver</u>. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.
- (e) Assignment. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement. For purposes of this Section, transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement; provided however, with respect to Host, such surviving entity is acceptable to Financing Party in its sole discretion.
 - (f) <u>Service Contract</u>. This Agreement is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code.
- (g) <u>No Joint Venture</u>. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.
- (h) <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

[signature page follows]

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

Monolith Solar Associates, LLC

By: ______ Name (printed): ______ Title: _____ By: _____ Name (printed): ______

Title:

EXHIBIT A

Project Specifications

nstallation Address:					
Project Size:	Watt Net Metered, Roof/Ground Mount Grid Tied Solar Electric System.				
Major Components - () Watt M - () Inverters - Rack system to suit	odules				
Power Utility Account Number –					
Annual Historical Usage –	kWh				
	The system is estimated to produce kWh annually (% of historical usage).				
	The PV System will include a Utility Style AC meter located near the inverter. This meter will provide a method of a total energy generated by the PV system.				
	Provider agrees to collect and report readings from the system every 3 months or as required by NYSERDA for a of 3 years.				

<u>EXHIBIT B</u> PAYMENT SCHEDULE – ENERGY PURCHASE RATES

PROVIDER and HOST agree as follows:

The total charges payable by Host under the Power Purchase Agreement are as set forth in this Schedule.

RATE:

The Cost per kWh or kW will be --- less as compared to the rate charged by the Host's Utility Provider(s). Host basis rate will be calculated on the date of system commissioning using the average of the total kWh charges for the previous twelve (12) months as obtained from the Utility(s) provider billings. If demand is eliminated or reduced, a cost for such reduction will be calculated per kW consumed.

ANNUAL ESCALATOR ADJUSTMENT:

An annual escalation of the Cost per kWh shall be applied each year during the month of January. The annual escalation will be applied at a rate of 2% per calendar year of the Agreement term. A schedule of Host's Cost per kWh will be attached hereto as Exhibit B-1.

BILLING:

After the end of each calendar month, Monolith will provide Host with an invoice showing the quantity of electricity produced by the Project, the applicable rates, and the total amount due. **The Host will receive an invoice from Provider each month.** (See page 21 for sample invoice).

Example Calculation: Monthly Payment = Electricity Generated (kWh) * Cost /kWh + Reduction in (kW) * Cost /kW

HOST	PROVIDER
Signature	Signature
Name (Print)	Name (Print)
 Date	Date

EXHIBIT B-1

Energy Purchase Rates Schedule

INSERT TABLE WITH RATES



Customer Name Customer Address

Monolith Solar LLC.

444 Washington Street Rensselaer, NY 12144

Invoice for Solar Energy

Due Date	
Invoice Date	
Invoice #	
Meter Number	
Billing Period	

Į	
1	Please check box if address is incorrect or has changed, and

Balance Due

\$153.86

SMG - A Monolith Solar Company

indicate change(s) on reverse side.

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

444 Washington Street Rensselaer, NY 12144

Phone # 518-444-2044

518-621-7061

Fax#

Make Checks Payable to SMG

Description		KWH	Rate	Amount
Monthly Payment on Previous Meter Reading: Current Meter Reading:		2,247 50,172 52,419	0.0634	142.46T
Sales Tax		2,	8.00%	11.40
	-			

1.5% charge is applied to all unpaid balances after 30 days past due. \$30 CHARGE FOR RETURNED CHECK. Thank you for your business.

Billing Inqueries? Call

518-444-2044

Balance Due

\$153.86

EXHIBIT C

APPLICABLE SOLAR PROGRAM NYSERDA - PON 2112

The New York State Energy Research and Development Authority (NYSERDA) provide an incentive per watt (DC) to eligible installers for the installation of approved, grid-connected photovoltaic (PV) systems. The maximum capacity supported by the program is 200 kW for non-residential systems. Incentives are only available to eligible installers, and incentives must be passed on in full to Hosts. PV systems must be sized to meet specific site energy needs (local load or demand) and may not exceed 110% of the demonstrated energy demand for the site, taking into account any other on-site electrical power generation systems. Incentive levels will be reduced in proportion to potential output losses of greater than 20%.

In the event that Incentives are rejected due to Host's material breach of this Agreement the Host will be responsible for the total amount of the incentive not paid by NYSERDA and shall pay said balance to Provider. The Host acknowledges that the expected NYSERDA incentive has been deducted from the total cost of the Photovoltaic System to be installed by Provider as a means to reduce the cash outlay by the Host. The incentive payments will be paid directly to Provider to reimburse them for the deduction of said incentives from the total cost of the system.

Once the NYSERDA application is approved (approximately 4 to 8 weeks) work shall typically commence within 90 days from written NYSERDA approval.

In the event that the maximum capacity supported by the program is increased, and Host desires to utilize such incentives, Host agrees to offer Provider the right of first refusal to install an expansion on the Project. Any expansion on the existing Project will be made in accordance with the energy demand for the site, not to exceed 110% of the demonstrated energy demand for the site. A separate Agreement must be executed for each expansion Project on the Site.

Payment and NYSERDA's right to make inspection visits

100% of NYSERDA rebates/payments will be passed on to the benefit of the Host. Host and Provider recognize that NYSERDA will not make any payments without proof that all required permits and approvals have or will have been obtained by the time of ordering of equipment and that all requirements have been met.

Host agrees that NYSERDA shall have the right to make a reasonable number of site visits to the Host's premises during and after the installation of the PV system up to 12 months following the completion of the project. Any visits will be at a time convenient to the Host and made with at least a one week advance notice to the Host by NYSERDA. Provider and Host will receive copies of written reports summarizing the results of the inspections.

HOST	PROVIDER	PROVIDER		
Signature	Signature			
Name (Print)	Name (Print)			
Date	 			

EXHIBIT D

PPA DG SUBSCRIPTION DISCLOSURE FORM

EXHIBIT E:

Monolith Solar Associates LLC Data Privacy

Monolith Solar has the following security policies:

- 1. Security Awareness Policy. This policy outlines how the company will periodically update and train staff on security.
- 2. Computer and Internet Usage Policy. This addresses employee Acceptable Use provisions.
- 3. Remote Access Policy. This policy addresses hardware and software used to connect to the company network remotely via VPN.
- 4. Firewall Policy.
- 5. Patch Management Policy.
- 6. IT Access Control Policy. This policy deals with how employees are granted access to resources (shared directories, applications, etc.), how access is maintained and revoked.
- 7. Physical Security Policy. This policy addresses security in the physical environment (doors, sensitive paperwork, etc.),
- 8. Incident Response Plan. This policy addresses what to do when the company has experienced a security breach.

Exhibit F:

Authorization Form for Release of Utility Data

I,	, having account #_	, hereby grant unlimited authority to Monolith
Sola	r Associates LLC to act as my Agent with regards to actions and c	prrespondence related to the Utility. I further authorize you to
relea	se to Monolith Solar Associates LLC any account information rec	uested as well as act as an agent for my satellite accounts.
Mond	olith Solar Associates LLC is granted full power to act on my beha	f in the same manner as if I were personally present.

In order for Monolith Solar to sell the Solar Credits to you, you and/or the Utility must provide us your electrical consumption history and other information, including, but not limited to, the following:

- 1. Your service address;
- 2. Your electric Utility account number;
- 3. Sales tax district used by the distribution Utility and whether the Utility identifies you as tax exempt;
- 4. Rate service class and subclass or rider by account and by meter, where applicable;
- 5. Electric load profile reference category or code, if not based on service class, whether your account is settled with the NYISO utilizing an actual 'hourly' or a 'class shape' methodology, or Installed Capacity (ICAP) tag, which indicates your peak electricity demand;
- 6. Your number of meters and meter numbers:
- 7. Whether you receive any special delivery or commodity "first through the meter" incentives, or incentives from the New York Power Authority;
- 8. Your Standard Industrial Classification (SIC) code (if applicable);
- 9. Your usage type (e.g., kWh), reporting period, and type of consumption (actual, estimated, or billed);
- 10. Whether your commodity service is currently provided by the utility;
- Twelve (12) months, or the life of the account, whichever is less, of your data and, upon separate request by us, an additional twelve (12) months, or the life of the account, whichever is less, of your data, and, where applicable, demand information; if you have more than one meter associated with an account, the utility shall provide the applicable information, if available, for each meter; and
- 12. Electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs), and if requested in detail, an acceptable alternative format.

All information obtained will be kept private and confidential and used by Monolith Solar only for utility and billing purposes.

Monolith Solar has privacy and security policies and processes that are designed to keep your data confidential and secure.

This authorization will be valid for the Term of the Agreement.