

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:	City of Fontana	Seller:	General Electric International Inc.
Name and Address	City of Fontana 8353 Sierra Ave. Fontana, CA 92372 Attn: Chuck Hays	Name and Address	General Electric International Inc. 1 River Road, Bldg 66 Schenectady, NY 12345 Attn: Eric Schiemann
Phone	(909) 350-6760	Phone	(518) 742-6863
Fax	(909) 350-6755	Fax	(518) 677-4804
E-mail	Chays@fontana.org	E-mail	Eric.schiemann@ge.com
Facility Ownership	Purchaser [X] owns [] leases the Facility. List Facility Owner, if different from Purchaser: _____	Additional Seller Information	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at Purchaser’s facility and/or surrounding property described in **Exhibit 4** (collectively, the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

<u>Exhibit 1</u>	Basic Terms and Conditions
<u>Exhibit 2</u>	System Description
<u>Exhibit 3</u>	General Terms and Conditions
<u>Exhibit 4</u>	Facility Real Property Description
<u>Exhibit 5</u>	Purchaser’s Termination Payment Schedule
<u>Exhibit 6</u>	Production Guarantee Schedule
<u>Exhibit 7</u>	Portfolio Projects Schedule

Purchaser:

Signature: _____

Printed Name: Kenneth R. Hunt

Title: City Manager

Date: _____

Seller:

Signature:  _____

Printed Name: Erik Schiemann

Title: General Manager

Date: 1/31/2019

Exhibit 1
Basic Terms and Conditions

1. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Two [five (5) year] periods following the end of Initial Term.
3. **Environmental Attributes:** Accrue to Purchaser.
4. **Energy Rate:**

For the Initial Term: Commencing on the Commercial Operation Date, Purchaser shall pay to Seller monthly an amount for each kWh of electricity multiplied by the prices as shown on **Exhibit 3, Attachment A** for each respective calendar Year.

For each Additional Term: For each Additional Term that the Parties opt to exercise, the price for each kWh of electricity will be determined by mutual agreement.

5. **Outside Installation Commencement Date:** 11/7/2019, which is the outside date by which the conditions (listed in Section 6.a of the General Terms and Conditions) to Seller installing the System and selling electricity to Purchaser must be satisfied.
6. **Anticipated Commercial Operation Date:** 12/15/2019
7. **Purchaser Options to Purchase System:** As set forth in Section 18.b of the General Terms and Conditions.
8. **Portfolio Projects:** The Purchaser and the Seller are entering into seven (7) separate solar power purchase agreements as described on the Portfolio Project Schedule **Exhibit 7** (each a “Portfolio Project” and together the “Portfolio”).
9. **System Installation:**

Includes:	[X] System design, engineering, permitting, installation, utility interconnection, monitoring and rebate application paperwork (if applicable). All work will be done in accordance with prevailing wage requirements in the State of California applicable to solar projects located on public property. [] Any like substantive equipment, in the sole discretion of Seller. [] State or Utility Rebate, if any. Describe: _____
Excludes:	• Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to the Facility or utility electrical infrastructure, payment bonds, performance bond(s), tree removal, or tree trimming; • Storm water drainage issues and or new storm water management systems; and • Temporary Site lighting.

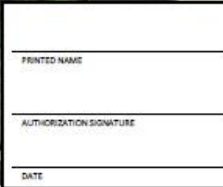
Exhibit 2
System Description

1. **System Location (“Delivery Point”):** 3528, 8353 Sierra Ave, Fontana, CA 92335
2. **System Size (DC kW):** 246.16 kW DC
 - a. Based on the final design and engineering process, Seller shall have the right to increase or decrease the size of a System by up to three percent (3%) without Purchaser’s approval.
3. **Expected First Year Energy Production (kWh):** 399,025
 - a. Subject to change based on final design and engineering.
4. **Expected Structure:** [] Ground Mount [X] Roof Mount [X] Parking Structure [] Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
SERAPHIM 340W	724
6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
SOLAREEDGE-SE20KUS	4
SOLAREEDGE-SE66.6KUS	2
7. **Facility and System Layout:** See **Exhibit 2, Attachment A**
8. **Utility:** Southern California Edison

Exhibit 2
Attachment A:





DS Energy Solutions
SOLAR • EPC • CONSTRUCTION MANAGEMENT • FINANCING

ADMINISTRATION & OPERATIONS OFFICE
22355 DORNIAN BLVD.
ARLINGTON, TEXAS 76010
TEL: 817-464-5776 FAX: 817-464-5775

CARPORT 1: 43.52 KW DC

CARPORT 2: 51.68 KW DC

ROOF: 150.96 KW DC

REMOVAL OF ALL X
MARKED TREES

CONTRACTOR LICENSE # 942290

System Information

Module Count	T8	Format	System Size KW DC
444	10"	180"	150.96
128	7.49"	180"	43.52
152	7.49"	180"	51.68

PROJECT NO. 17-1

DATE 02/08/2018

CITY HALL

PROJECT NO. PV-1

DATE 10/31/17

SITE PLAN

NOTES

Exhibit 3
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and each Additional Term (each as defined in **Exhibit 1**, and collectively the “**Term**”), regardless of Purchaser’s ability to use such energy. The size of the System has been designed by Seller to ensure that Purchaser will be able to make beneficial use of all electricity that is produced by the System based on Purchaser provided projected energy requirements over the Term. Electric energy generated by the System will be delivered to Purchaser at the Delivery Point identified on **Exhibit 2**. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser acknowledges that Purchaser’s electric energy requirements at the Facility may exceed the output of the System, and in such event Purchaser may purchase electric energy for the Facility from other sources. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. Purchaser may not resell any of the electrical energy generated by the System. For purposes of this Agreement, engaging in net metering is not deemed to be resale of energy.
3. **Term and Termination.**
 - a. **Initial Term.** This Agreement is effective as of the Effective Date. The initial term of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement (“**Initial Term**”). The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of delivering electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser’s request, Seller shall give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth on **Exhibit 2**.
 - b. **Additional Terms.** If Purchaser (i) has not exercised its option to purchase the System prior to the end of the Initial Term or each Additional Term and (ii) desires to extend this Agreement on the terms and conditions set forth herein, Purchaser shall notify Seller at least ninety (90) days and not more than one hundred eighty (180) days prior to the expiration of the Initial Term or any Additional Term, as applicable, of its desire to extend this Agreement for the number and length of any Additional Terms specified in **Exhibit 1** (each, an “**Additional Term**”)(such notice, an “**Extension Notice**”). Seller and Purchaser will negotiate an Energy Rate for such Additional Term. If the Parties agree to an Energy Rate, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current Additional Term on the same terms and conditions as set forth in this Agreement except at the new agreed-upon Energy Rate. If the Parties do not agree on a new Energy Rate within thirty (30) days of notification to Seller of Purchaser’s desire to extend the Agreement, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller on a monthly basis for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate for the applicable Contract Year (as defined below) as shown in this **Exhibit 3, Attachment A** (the “**Energy Rate**”). Purchaser shall make monthly payments for energy equal to the applicable Energy Rate multiplied by the aggregate number of kWh of energy delivered by the System during the applicable month, as measured by the System meter. Purchaser acknowledges that Seller shall have the right for accounting convenience to apply the amount of Rent (as such term is defined in the Lease) then owed by Seller (as Tenant) to Purchaser (as Premises Owner) under the lease of the portions of the Facility necessary to install, operate

and maintain the System (the “**Lease**”) as a credit off-set against the monthly payments payable by Purchaser pursuant to this Section 4.a or any other amounts payable by Purchaser under this Agreement. “**Contract Year**” means the twelve (12) month period beginning at 12:00 AM on the Commercial Operation Date, and at 12:00 AM on each subsequent anniversary of the Commercial Operation Date, and ending at one past 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date; provided that the first Contract Year shall begin on the Commercial Operation Date.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through Automated Clearing House (“ACH”) as determined by Seller. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the Energy Rate applicable thereto, and other charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Energy Rate includes ACH invoicing.
- c. **Taxes.** Purchaser is a public agency which is tax-exempt. To the extent that there are any taxes assessed against the property or the value of the System as a result of this Agreement, Seller will be responsible for the payment of such taxes. Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System. Purchaser will be responsible for any taxes assessed as a result of the interconnection of the System to the Utility’s electric distribution system. “**Taxes**” means any federal, state and local tax, including ad valorem, property (real and personal), occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of energy under this Agreement, which shall be Seller’s responsibility. Seller shall further be responsible for taxes and duties related to purchase and importation of materials and components necessary to construct the System, taxes based on or related to income, receipts, capital or net worth of the Seller, Seller’s contractors’, or its subcontractors’ labor and income.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable by Purchaser to Seller on the date that is thirty (30) days from Purchaser’s receipt of Seller’s invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime rate, as published in the *Wall Street Journal*, but not to exceed the maximum rate permitted by law.

5. **Environmental Attributes.**

Purchaser is the owner of all Environmental Attributes (each as defined below) and Seller is entitled to the benefit of all Tax Incentives (as defined below). Except for the Environmental Attributes, Purchaser’s purchase of electricity under this Agreement does not include the right to Tax Incentives or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes and Purchaser shall cooperate with Seller in obtaining, securing and transferring the benefit of all Tax Incentives or any other attributes of ownership and operation of the System. Each party shall bear the out-of-pocket costs or expenses in connection with the rights held by such party. If any Environmental Attributes are paid directly to Seller, Seller shall immediately pay such amounts over to Purchaser. If any Tax Incentives or any other attributes of ownership and operation of the System are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. Purchaser shall further be entitled to participate in and retain any benefits from any net metering program of the Utility.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to any Governmental Authority related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Incentives. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state public utility commission or governmental body with equivalent jurisdiction to regulate sales of electric power in connection with the System), or any arbitrator with authority to bind a party at law.

“**Tax Incentives**” means any and all (a) depreciation benefits, (b) investment tax credits, (c) production tax credits and (d) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

- a. The Parties are aware there will be separate projects, consisting of [solar and] battery energy storage systems, being developed concurrently with this System (the “Microgrid Project”). As a pre-condition to the Seller commencing on the Conditions set forth in Section 6.b below; Purchaser shall Seller with detailed information of the Microgrid Project and its impact on the System including but not limited to System size, interconnection points, metering and operation.
- b. Conditions. Seller’s obligation to install the System and sell electric energy generated by the System to Purchaser are conditioned on the completion of the following conditions to Seller’s satisfaction on or before the Outside Installation Commencement Date (as defined on Exhibit 1):
 - i. Seller shall have completed a physical inspection of the Facility including, if applicable, structural engineering, suitability of electrical subsystems and transformers and or geotechnical reviews as necessary to confirm the suitability of the Facility for the System;
 - (1) If subsurface excavation is necessary for the System, Seller shall have completed environmental due diligence with respect to the applicable site;
 - (2) If Seller determines that it will incur additional cost that is not included in the current scope of work and pricing as a result of the due diligence investigation described in this Section 6(a), then Seller may request an equitable adjustment to the pricing, schedule and other terms of this Agreement to compensate Seller for the costs incurred for such work in excess of normally expected work required to be performed by Seller arising from such inspection. If Purchaser agrees to such modifications, then Seller and Purchaser will execute a written amendment to this Agreement. If Purchaser does not agree to the proposed modifications, then the Parties shall negotiate in good faith to an equitable solution within thirty (30) days. If, after thirty (30) days, the Parties cannot agree then either Seller or Purchaser may terminate this Agreement and Purchaser shall pay to Seller all of Seller’s costs and expenses incurred through the date of termination, including Seller’s costs of inspecting the Facility, designing the System and any procurement and or installation work on the System through the date of termination.
 - ii. Seller shall have received the Lease and any additional documents required thereunder (such documents together with the Lease, the “**Real Property Documents**”) duly executed and delivered by Purchaser and any applicable third parties;
 - iii. Seller shall have received approval from Seller’s Financing Parties (as defined in Section 23.b) of Purchaser and each of (A) this Agreement, (B) the Real Property Documents and (C) the Construction Agreement (if any) for the System. “**Construction Agreement**” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;
 - iv. Seller shall have received results, satisfactory to Seller, of a recent search of Purchaser’s jurisdiction of all effective UCC fixture and real property filings that have been made with respect to the Facility;
 - v. Seller shall have obtained confirmation from the applicable Governmental Authority that Seller will receive all applicable Tax Incentives;
 - vi. Seller shall have obtained all necessary zoning, land use, environmental, building and other permits from the applicable Governmental Authority necessary for Seller to perform its obligations under this Agreement;

- vii. Seller shall have executed all necessary agreements with the Utility for interconnection of the System to the Facility electrical system and/or the Utility's electric distribution system; and
- viii. Seller shall have received:
 - (1) Purchaser's approval, in accordance with Section 8.b, of material changes, if any, to the System design specifications set forth on Exhibit 2;
 - (2) Proof of insurance for all insurance required to be maintained by Purchaser under this Agreement; and
 - (3) Written confirmation from any person holding a mortgage, lien or other encumbrance over the Facility, or any portion thereof, that such person will recognize Seller's rights to the System and under this Agreement.
- c. **Purchaser Conditions.** Purchaser shall have entered into that certain Energy Services Agreement with Alliance Building Solutions, Inc., and all conditions precedent to the implementation of such agreement shall have been satisfied.
- d. **Failure of Conditions.** If any of the conditions listed in subsection (a.i through a.vii) above are not satisfied by the Outside Installation Commencement Date, the Parties shall attempt in good faith to negotiate new dates for the satisfaction of the failed conditions, or, if the Parties are unable to negotiate such new dates within thirty (30) days of the Outside Installation Commencement Date, either Party may terminate this Agreement upon ten (10) days written notice to the other Party without any liability to the other Party. Seller has the right but, not the obligation, to terminate if the Purchaser fails to provide documents by the Outside Installation Commencement Date in subsection a.ii and a.viii.1-3 and Purchaser shall pay actual direct costs incurred by Seller.
- e. **Notice to Proceed.** At such time as all of the foregoing conditions precedent have been satisfied and Seller is ready to proceed, Seller will provide Purchaser with written notice of such fact and within five (5) days thereof, Purchaser will provide Seller with a written Notice to Proceed.
- f. **Portfolio.** In the event one Portfolio Project fails to meet conditions or Purchaser does not provide Seller with a written Notice to Proceed on a Portfolio Project or Purchaser terminates or Defaults on any Portfolio Project; the Seller may terminate the Portfolio without any liability or obligation to Purchaser except for System removal. Purchaser shall pay to Seller actual direct costs incurred by the Seller on the Portfolio.

7. Seller's Rights and Obligations.

- a. **System Design and Finalization.** Seller shall design and engineer the System (i) taking into consideration Purchaser's historical electrical generation requirements, (ii) based on inspections of the Facility and studies undertaken by Seller, and (iii) in compliance with any laws, governmental approvals or roof warranty provided by Purchaser to Seller. Seller shall prepare and submit to Purchaser the draft final specifications for the System, including product data on all equipment proposed for installation, as soon as possible following the Effective Date. The description of the System design shall be incorporated into Exhibit 2. The Purchaser shall review and provide comments or approve within ten (10) business days. If Seller is required to make material changes to the System design specifications set forth on Exhibit 2, then Purchaser shall have the right to review and approve such material changes prior to Seller's commencement of construction of the System; provided that Purchaser's consent to such changes will not be unreasonably withheld or delayed. If solar energy panels and other System assets documented in Exhibit 2 (such panels and System assets, "**System Equipment**") are not readily available when Seller installs the System, Seller may make substitutions of such System Equipment which is of the same or better quality and provides the same or better warranty coverage; provided Seller shall obtain Purchaser's prior consent for System Equipment substitutions that would materially affect the appearance or capacity of the System, or require a change to the Energy Rate. Upon the completion of System installation, Seller shall provide Purchaser with "as-built" drawings setting forth in detail the location of all components of the System. Purchaser and Seller agree to treat such plans and specifications as well as the "as-built" drawings as Confidential Information of Seller, in accordance with Section 24.a.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use, environmental, building and other permits required to construct, install and operate the System; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.
- c. **System Construction, Installation Repair and Maintenance.** Seller shall provide notice to Purchaser when the conditions to Seller's obligations set forth in Section 6.a have been satisfied or waived by Seller and Seller is prepared to engage the EPC Contractor (as defined below) to commence installing the System (the "**Conditions Satisfaction Date**"). Seller or one of its affiliates (the "**EPC Contractor**") shall construct and install the System at the Facility in accordance with Good Solar Industry Practices. During the Term, Seller shall operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's or its contractor's negligence or breach of this Agreement or the Lease (if applicable). Seller shall not be responsible for any work done by parties not engaged or hired by Seller on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- "**Good Solar Industry Practices**" means, with respect to the services being provided by Seller or its affiliate, or any other contractor or subcontract pursuant to this Agreement, those practices, methods, equipment, specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly provided for solar photovoltaic energy systems of a type and size similar to the System and in the same geographic region as the System that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition.
- d. **Net Metering.** The provisions in this Section only apply if net metering is permitted by the Utility at the site. Seller shall use its commercially reasonable efforts to support Purchaser's delivery and resale to the Utility of electrical energy through net metering in accordance with applicable laws.
- e. **System Construction and Installation Progress Reports.** Seller shall cause the EPC Contractor to keep Purchaser informed on the progress of System construction and installation in a manner and on a schedule mutually agreed upon by Seller and Purchaser.
- f. **Costs Due to Unexpected Site or Facility Conditions, Hazardous Materials or Changes Requested by Purchaser.** If, after Seller has conducted the due diligence and inspection of the Facility pursuant to Section 6(a) and the Notice to Proceed has been given, Seller incurs material additional costs to re-design, construct, install or maintain the System due to (i) unforeseen conditions at the Facility, (ii) unforeseen groundwork at the site (including, but not limited to, artifacts, trash pits, boulders, excavation/circumvention of underground obstacles), (iii) the existence of Hazardous Substances at the site or Facility (as defined in Section 19.c.i), or (iv) the inaccuracy of any information provided by Purchaser and relied upon by Seller, (v) electrical engineering site visits will be performed. Site visits will determine if the existing equipment is satisfactory from a rating standpoint. But the condition of the equipment and functionality of the equipment will not be determined until the construction phase. Any upgrades required for faulty equipment will require a change order, (vi) structural engineering site visits will be performed. During these sites visits, not all areas of the roof are accessible. Thus areas that are not acceptable would be subject to change orders, should issue arise, or (vii) the request by Purchaser to make additional changes or modification to the System that were not contemplated as of the Notice to Proceed ("**Unanticipated Conditions**"), then Seller may make an equitable adjustment to the pricing, schedule and other terms of this Agreement to compensate Seller for the actual additional costs incurred by the Seller as a result of such conditions or modifications. Following receipt from Seller of a requested adjustment for a change or modification, Purchaser may elect to proceed with or withdraw such request. Upon termination Purchaser shall pay to Seller all of Seller's costs and expenses incurred through the date of termination, including Seller's costs of inspecting the Facility, designing the System and any procurement and or installation work on the System through the date of termination.
- g. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from

the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

- h. Suspension.** Notwithstanding anything to the contrary herein (and without limiting Seller's remedies under Section 15.b.i), Seller shall be entitled, in its sole discretion, to suspend delivery of electricity from the System to the Delivery Point (i) in the event of an emergency, including the presence of Hazardous Substances, (ii) for the purpose of maintaining and repairing the System or (iii) at the request of the Utility and, in each case of (i) through (iii) above, (a) such suspension of service shall not constitute a breach of this Agreement, (b) Seller shall have no liability for Purchaser to obtain electricity from other sources for the duration of such suspension, (c) Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser, and (d) Purchaser will not be required to pay for any Deemed Delivered Energy during such suspension.
- i. Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided, however, that such contractors and subcontractors shall (i) be duly licensed and provide any work in accordance with Good Solar Industry Practices and (ii) use commercially reasonable efforts to perform obligations under this Agreement while minimizing disruption to Purchaser's business and operations. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- j. Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or any portion thereof in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility.
- k. Production Guarantee:** The Purchaser acknowledges and understands that solar power is an intermittent resource and that the Actual kWh Production of the System, which is dependent on the sun and other factors, will constantly vary.

Upon the third anniversary of the Commercial Operation Date and then every three (3) calendar years thereafter (each, a "triennial period") and two (2) years for the final period, the Seller guarantees that the total Actual kWh Production plus any Excused Production Losses, as defined herein, (the "Adjusted Production"), of such five (5) calendar year period will be greater than or equal to ninety-five percent (95%) of the Estimated Period Production, defined in Exhibit 6, for the corresponding triennial period and subject to downward adjustment for weather conditions (the "Guaranteed Production"). To the extent that the System output is negatively impacted by casualty, government regulation and or restriction that is beyond the Seller's control to remedy within a reasonable time period, the Parties shall negotiate in good faith a modification of the Guaranteed Production.

Credit

If, at the end of any triennial period, the Actual kWh Production plus the Excused Production Losses for such triennial period is less than the Guaranteed Production for the corresponding triennial period, the Seller shall credit the Purchaser, on the next invoice, an amount equal to the average variable utility rate of electricity paid by Purchaser to the Utility during such triennial period ("AUR") minus the average Energy Rate paid by Purchaser to Seller during such triennial period ("AER") multiplied by the Guaranteed Production minus the Adjusted Production, all for such triennial period. For clarity the credit shall equal $(AUR - AER) \times (\text{Guaranteed Production} - \text{Adjusted Production})$.

Weather Adjustment: Adjustment to the Guaranteed Production values, provided in Exhibit "6", for weather shall use local weather data as recorded during the corresponding triennial period in descending order of preference: (i) satellite data provided by a third-party vendor of Seller; or (ii) available data from a locally installed weather station at the premises of the System. The adjustment for each triennial period shall be determined by calculating the ratio of solar insolation (in kWh/m²) recorded during the triennial period divided by three (3) the annual solar insolation given in the meteorological weather file provided as input to the model used to generate the Estimated Period Production values. If this ratio is less than one, the Guaranteed Production values shall be adjusted by multiplying by this ratio. Otherwise, the Guaranteed Production shall not be modified. The solar insolation used for this calculation shall be plane-of-array insolation if the PV system has a single array plane and both measured and modeled values of plane-of-array insolation are available. Otherwise, global horizontal insolation shall be used.

Excused Production Losses:

Force Majeure Events: lost production from the beginning of a Force Majeure Event until production limiting factors caused by the Force Majeure Event have been remedied.

Grid Event: lost production when a fluctuation in the Grid frequency or voltage causes the inverters or the System to disconnect from the Grid. The “Grid” is defined to be the system receiving power exported from the System.

Grid Outage: lost production when a failure in the grid or Interconnection Infrastructure prevented energy from being exported from the solar facility. “Interconnection Infrastructure” means that utility-owned and maintained interconnection equipment (the substation including but not limited to transformers, switches, and protective relays) that is used to connect the Facility to the utility grid. Grid operator/owner ordered curtailments for any reason, other than an issue in the System, is a Grid Outage. **Weather Events:** lost production from weather that limits or prevents safe operation of the solar facility including floods, snow, hurricanes, tornadoes, insolation-limiting wild fires and volcanic activity.

Purchaser Caused: Lost production when System dc capacity is off-line due to outages attributable to Purchaser’s and or site owner’s decision to perform or cause to be performed, any investigations, studies, operations, construction, installation and maintenance work or other activities deemed appropriate by Owner in its sole discretion.

I. Warranty Disclaimer. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. THE WARRANTY SET FORTH IN THIS AGREEMENT SHALL BE PURCHASER’S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM REGARDING DEFECTS IN WORKMANSHIP, ANY SYSTEM EQUIPMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8. Purchaser’s Rights and Obligations.

- a. **Notice to Proceed; System Design and Finalization.** In accordance with Section 7.a, Purchaser shall have the right to review and approve (i) material changes, if any, to the System design specifications set forth on Exhibit 2 prior to Seller’s commencement of System construction and (ii) all System Equipment substitutions. With respect to (i) and (ii) in the preceding sentence, Purchaser shall promptly review the applicable information and respond to Seller.
- b. **Cooperation.** Purchaser shall (i) provide Seller and its subcontractors, consultants, agents and representatives with reasonable access to the Facility for the purpose of designing the System, including conducting related inspections and studies, and accessing relevant documents, materials and records of Purchaser in conjunction with such activities, (ii) cooperate with Seller’s reasonable requests for information and access to the Facility for purposes of designing and installing the System and (iii) cooperate with all of Seller’s requests to assist Seller in obtaining any necessary agreements, permits and approvals pursuant to Section 7.b. Purchaser’s failure to provide such cooperation shall be a default under this Agreement subject to Section 15.c.
- c. **Maintenance of Facility.** Purchaser shall, at all times at Purchaser’s sole cost and expense, maintain the Facility (including, without limitation, the applicable portions of the roof and raceways and risers of the Facility) in good condition and repair and in a manner sufficient to support the System. Regardless of whether maintenance and repairs are made in the ordinary course or in an emergency, all maintenance and repairs shall be carried out in a manner that minimizes the impact on the System. Purchaser is fully responsible for the maintenance and repair of the Facility’s electrical system and of all of Purchaser’s equipment that utilizes the System’s outputs. Except in the event of Scheduled Outages below, a failure of the Facility to accept energy produced by the System (whether due to a failure in Purchaser’s electrical system, maintenance or otherwise) will not excuse Purchaser from paying Seller for the energy production of the System that, in Seller’s reasonable estimation as provided below, would have been delivered to Purchaser from the operation of the System in the absence of a failure of the Facility to accept the energy produced and delivered by the System (“**Deemed Delivered Energy**”) and compensating Seller at the current Energy Rate and any lost Tax Incentives from such Deemed Delivered Energy. Notwithstanding the foregoing, Seller agrees that Purchaser will need to do maintenance from time to time that may result in System down time and that Purchaser will have the right to schedule five (5), twelve (12) hour periods (“**Scheduled Outages**”) of maintenance time during the life of the Term without incurring any additional charge for Deemed Delivered Energy. However, Purchaser maintenance scheduled and performed concurrently when Seller shuts down the System for Seller maintenance shall not be considered a Scheduled Outage. Seller shall not be obligated to delay System start-up for Purchaser maintenance. Seller’s estimation of Deemed Delivered Energy will be based on (a) past energy output delivery by the

System during a similar period and under similar conditions if such information is available or (b) if such information is not available, based upon any other relevant information or bases which may reasonably be available to Seller and used for such purpose in the circumstances and consistent with Good Solar Industry Practices. Purchaser shall promptly notify Seller of any condition at the Facility of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

- d. **No Alteration of Facility.** Purchaser will have the right to undertake periodic alterations and upgrades of the Facility as necessary to keep the Facility in good condition as requirement pursuant to sub-section (c) above. In the event the Purchaser makes any alterations or repairs to the Facility that could adversely affect the operation, capacity and or maintenance of the System, Purchaser shall pay to Seller direct cost and expenses associated with such event including compensation for any Deemed Delivered Energy and lost Tax Incentives. Furthermore, in the event of a reduction in capacity, Purchaser shall compensate Seller for Deemed Delivered Energy plus lost Tax Incentives for the balance of the then current Term. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser's or its contractor's negligence or breach of this Agreement or the Lease. To the extent that temporary disconnection or removal of the System is necessary for Purchaser to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost, and Purchaser shall pay Seller for Deemed Delivered Energy and revenues or other benefits from Tax Incentives that Seller would have received from the Deemed Delivered Energy of the System during any time that the System is not operating due to such disconnection in excess of the Scheduled Outages specified in sub-section (c) above. All of Purchaser's alterations and repairs shall be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Interconnection and Net Metering.** Purchaser shall be entitled to participate in and retain any benefits from any net metering program of the Utility. If Purchaser elects to participate in a net metering program, Purchaser shall (i) sign all documentation required for net metering, (ii) ensure that the Facility remains interconnected to the Utility grid at all times to maintain net metering, (iii) not take any action, or fail to take any action, which prevents net metering, and (iv) comply with all applicable laws required for net metering.
- f. **Liens.** Except in accordance with Section 23.a, Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall provide such security for the Facility as it deems reasonable and necessary, but shall not be required to provide any additional security in connection with the System. Purchaser shall avoid conducting activities on, in or about the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall be responsible for all damage to the System caused by Purchaser's activities and or negligence.
- h. **Tenant Purchaser Notices.** If Purchaser is a lessor of the Facility (including any ground lease underlying a Facility), Purchaser shall provide to Seller immediate written notice of (i) receipt of notice of eviction from the Facility, (ii) termination of Purchaser's lease of the Facility, and (iii) a breach of any of the Real Property Documents that could reasonably be expected to lead to an eviction if such breach was not cured.
- i. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation and shall not construct or install, or knowingly permit to be constructed or installed, any alterations, modifications or improvement to the Facility or any other property owned or controlled by Purchaser or an affiliate of Purchaser that interferes with or blocks the System's Insolation. In addition to the foregoing, Purchaser shall not permit the growth of foliage that interferes with or blocks System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that (i) reducing Insolation would irreparably injure Seller, (ii)

such injury may not be adequately compensated by an award of money damages, and (iii) Seller is entitled to seek specific enforcement of this Section 8.i against Purchaser.

- j. **Data Line.** Purchaser shall provide Seller a high speed internet data line that meets Seller's minimum performance requirements during the Term to enable Seller to receive and monitor data regarding electric energy generation and other System information, including site level energy load data. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- k. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by Purchaser of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller promptly following discovery upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- l. **OSHA Compliance.** Purchaser will ensure that all applicable OSHA requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.

9. **Change in Law.**

"Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); or (iii) a change in any Utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

Purchaser and Seller will cooperate to modify the System or the operation thereof to mitigate the impacts of any Change in Law. In the event that there is a Change in Law that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then Seller may propose an equitable adjustment to the Energy Rate over the remainder of the Term. If such change is not acceptable to the Purchaser, then Seller will have the option to terminate this Agreement at no cost or expense to Purchaser.

10. **Relocation of System.**

If Purchaser ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation, in each case reasonably acceptable to Seller. Purchaser shall provide written notice to Seller at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. The Parties shall negotiate in good faith the terms and conditions of such System relocation, including the costs of relocation and any necessary adjustments to the Energy Rate for redesign or Insolation. Purchaser will further have the right, after year ten (10), to purchase the System in accordance with the terms set forth in Section 18. Purchaser's inability to provide a substitute facility for relocation of the System on terms acceptable to Seller will be treated as a Default Event by Purchaser pursuant to Section 15.a.iv.

- 11. **Disruption of Delivery.** The duration of any maintenance, repair, or upgrade of the Site Electrical System that disrupts System output will constitute a Disruption of Delivery; provided, however, that if the need for any such repair or maintenance is caused by the negligence or intentional misconduct of the Seller, then the period required for such maintenance or repair will not constitute a Disruption of Delivery. Purchaser and the Seller will coordinate such activities so as to minimize disruption to the System. In no event shall repairs, maintenance or replacement undertaken by Purchaser pursuant to this section and constituting a Disruption of Delivery on the part of Purchaser's impact or impair the Seller's ability to operate the System in accordance with the Interconnection Agreement at the conclusion of such a Disruption of Delivery.

13. **Removal of System at Expiration.**

Upon the expiration or earlier termination of the Lease (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred and eighty (180) days after the expiration of the Term; provided, however, Purchaser shall bear all costs and expenses of Seller's removal of the System if removal is necessary due to a Default Event of Purchaser. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of the System; provided, however, Seller shall not be required to remove (i) any supports, canopies, anchors, penetrations, conduits or other similar ancillary equipment which were installed by Seller if, in Seller's reasonable judgment, the removal of such supports, anchors, penetrations, conduits or other similar ancillary equipment would cause harm and damage to the Facility, and (ii) any underground foundations or underground or buried conduits and cabling installed by Seller on or about the Facility. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space at no expense to Seller for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

14. Metering, Measurement and Ownership of Data.

- a. **Metering and Measurement.** Seller shall install one or more revenue grade bidirectional meter(s) (the "**Seller Meter**"), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. The Seller Meter shall (i) meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility and (ii) provide and preserve a continuous flow of data to Seller twenty-four (24) hours per day through the data line provided by Purchaser pursuant to Section 8.j. Seller shall maintain the Seller Meter in accordance with industry standards. Seller will provide Purchaser with access to data from the System on a real time basis. If the Seller Meter's operation is interrupted at any time for any reason, or is found to be inaccurate and in need of repair or replacement, Purchaser will pay invoices to Seller using the Deemed Delivered Energy estimation process for such period of interruption, or for the period from the last test of the affected Seller Meter that shows it to have been operating properly through the date upon which the Seller Meter is corrected.
- b. **Ownership of Meter Data.** Seller shall own all data generated by the Seller Meter (the "**Meter Data**"). Purchaser acknowledges that Seller may copy, reproduce, alter, aggregate, use, distribute and make available to third parties Meter Data to perform its obligations hereunder and otherwise to further its business purposes, including for research and development, data analysis, marketing, and to improve upon, develop and offer new products and service offerings, provided that if Seller distributes or makes available Meter Data to third parties that are not affiliates of Seller, such Meter Data shall be in a format that is aggregated and anonymized and does not directly or indirectly identify Purchaser or the Facility.

15. Default, Remedies, Damages and Termination.

- a. **Default.** Any Party, or the Party specifically indicated below, as applicable, that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay;
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
 - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

- iv. Purchaser loses its rights to occupy the Facility;
- v. Purchaser ceases to conduct business operations at the Facility unless Purchaser and Seller agree on terms of a relocation of the System pursuant to Section 10;
- vi. a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect;
- vii. Purchaser prevents Seller from installing the System or Purchaser otherwise performs or fails to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement; or
- viii. the Lease is terminated for any reason other than the election by Seller (exercised in Seller's sole discretion) or Seller otherwise loses its rights to occupy the Premises (as defined in the Lease) or any of the easements granted pursuant to the Lease.
- ix. Purchaser fails to provide Seller with access to, on, over, under and across the Facility for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; or (b) performing all of Seller's other obligations under this Agreement and exercising any rights under the Lease.

b. Remedies.

- i. Remedies for Defaults. On the occurrence of a Default Event, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. If Purchaser is the Defaulting Party, then Seller may, in its sole discretion and upon not less than ten (10) days written notice to Purchaser, cease providing electric energy generated from the System to Purchaser. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- ii. Seller Remedies Upon Termination for Purchaser Default. If Purchaser is the Defaulting Party and Seller terminates this Agreement, Seller may, in its sole discretion and upon not less than ten (10) days prior written notice to Purchaser, cease providing electric energy generated from the System to Purchaser and request that Purchaser pay a termination payment to Seller (the "**Purchaser's Termination Payment**"). The Purchaser's Termination Payment shall be in accordance with Purchaser's Termination Payment schedule in Exhibit "5", plus Seller's costs for System removal. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the Purchaser's Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Purchaser's Termination Payment shall not be less than zero.
- iii. Purchaser Remedies Upon Termination for Seller Default. If Seller is the Defaulting Party and Purchaser terminates this Agreement, then Seller shall remove the System within one hundred eighty (180) days of the termination date.

- c. Purchaser Default Prior to Commercial Operation Date. If Purchaser fails to perform its obligations under this Agreement, including Purchaser's cooperation obligations under Section 8.b, prior to the Commercial Operation Date and such failure continues for ten (10) days after notice thereof by Seller to Purchaser then, without limiting any remedy Seller may have under this Agreement or at law or in equity, Seller may terminate this Agreement upon notice to Purchaser and Purchaser shall pay to Seller all of Seller's costs and expenses incurred through the date of termination, including Seller's costs of inspecting the Facility, designing the System and any procurement and installation work on the System through the date of termination.

- d. Early Termination for Excessive Cost. If a change in the Energy Rate or other form of compensation related to additional cost that will be incurred by Seller as a result of structural upgrade, utility system upgrades and or Unanticipated Conditions cannot be mutually agreed upon without thirty (30) days of the date of the request, then

either Party will have the right to terminate this Agreement. Upon termination Purchaser shall pay to Seller all of Seller's costs and expenses incurred through the date of termination, including Seller's costs of inspecting the Facility, designing the System and any procurement and or installation work on the System through the date of termination.

- e. **Early Termination after the Outside Commercial Operation Date.** If the System has not achieved its Commercial Operation Date within one hundred eighty (180) days of (as extended by Force Majeure events or as mutually agreed by the Parties) 6/15/2020 (the "Outside Commercial Operation Date") then either Party may terminate this Agreement upon ten (10) days written notice to the other Party and without any liability for such termination. Upon such event, Seller will remove the System and return the Facility to its original condition in accordance with Section 13 of this Agreement.
- f. **Seller Termination.** Prior to the Commercial Operation Date (including any time prior to the Outside Installation Commencement Date), Seller may terminate this Agreement upon written notice to Purchaser. Seller shall not have any liability for such termination, except that no such termination shall act to relieve Seller from any obligation hereunder regarding the removal of the System. **Portfolio.** In the event one Portfolio Project fails to (i) meet conditions set forth in Section 6.b; (ii) Purchaser does not provide Seller with a written Notice to Proceed on a Portfolio Project; or (iii) Purchaser terminates or Defaults on any Portfolio Project; the Seller may terminate the Portfolio without any liability or obligation to Purchaser except for System removal. Upon termination Purchaser shall pay to Seller all of Seller's costs and expenses incurred through the date of termination, including Seller's costs of inspecting the Facility, designing the System and any procurement and or installation work on the System through the date of termination.

16. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date and the Conditions Satisfaction Date:
 - i. **Organization; Authority; Enforceability.** Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement has been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and does not violate any law; and this Agreement is a valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. **Approvals; Compliance with Laws.** Such Party has obtained all permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws (including Environmental Laws) that relate to this Agreement in all material respects.
- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following as of the Effective Date and the Conditions Satisfaction Date:
 - i. **Ownership of Facility and Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
 - ii. **Accuracy of Information.** Purchaser will not have knowingly have made an inaccurate or misleading statement with respect to the information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements. Purchaser warrants that it has provided accurate copies of all utility bills and other information requested by Seller.
 - iii. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - iv. **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.

- v. Hazardous Substances. Except as disclosed to Seller, there are no Hazardous Substances that exist in the areas on or near the Facility where Seller or its subcontractors will undertake to install, operate, maintain or repair the System.

17. System and Facility Damage and Insurance

a. System and Facility Damage

- i. Seller's Obligations. If the System is damaged or destroyed by casualty of any kind or any other occurrence other than by Force Majeure (as defined in Section 22.a) or Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that (A) if the System is damaged or destroyed as a result of Purchaser's or its contractor's negligence or breach of this Agreement, such repair and restore of the System shall be at Purchaser's cost as provided in Section Error! Reference source not found, and (B) if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the Fair Market Value (as defined in Section 18.c) of the System.
- ii. Purchaser's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Purchaser's Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

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

- i. Seller's Insurance. Seller shall maintain (A) property insurance on the System covering "All Risks" perils for the full replacement cost of the System, except the perils of flood, earthquake and Windstorms (as defined in Seller's insurance policy), which will be subject to annual aggregates applying to the System in amounts to be determined by Seller, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) where applicable, employer's liability insurance with coverage of at least \$1,000,000 and (D) where applicable, workers' compensation insurance as required by law.
 - ii. Purchaser's Insurance. Purchaser shall maintain (A) commercial general liability insurance for the Facility with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (B) property insurance on the Facility covering "All Risks" perils in an amount equal to the full replacement cost of the Facility; (C) business interruption insurance covering Purchaser's operations at the Facility; and (D) workers' compensation insurance covering all employees of Purchaser, as required by the laws of the State in which the Facility is located, and employers' liability coverage subject to a limit of no less than \$500,000 for bodily injury by accident per accident/\$500,000 for bodily injury by disease per employee/\$1,000,000 for bodily injury by disease policy limit. As a public agency, Purchaser may provide the foregoing insurance through a risk pool or self-insured retention program.
- c. Policy Provisions**. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the Party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party. Each party shall name the other party as additional insured as respects commercial general liability and employers liability. Each party shall waive its rights of subrogation against the other party on all required policies including workers compensation where allowable by law.

- d. **Certificates.** Upon the other Party's request each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

18. Ownership; Option to Purchase.

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and Seller shall be entitled to the benefit of all Tax Incentives of the System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility notwithstanding that certain portions of the System may otherwise qualify as fixtures due to the manner of installation of the System. Each of Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under Section 23) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it shall use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Facility which could reasonably be construed as prospectively attaching to the System as a fixture of the Facility, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Facility, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Facility in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. Without limiting the generality of the foregoing, Purchaser hereby waives any statutory or common law lien that it might otherwise have in or to the System or any part thereof and agrees that, notwithstanding the occurrence of a Default Event by Purchaser under this Agreement beyond all applicable notice and cure periods (including those granted to Financing Parties), Seller or any Financing Party (or its designee) shall own and may remove the System from the Facility at any time.
- b. **Option to Purchase.** At the end of the tenth (10th) Contract Year and at the end of the Initial Term or each Additional Term (each such date a "**Purchase Option Date**"), so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller for a purchase price equal to the Fair Market Value (as defined in Section 18.c) of the System as of the Purchase Option Date. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the Purchase Option Date, and the purchase shall be completed on or before the Purchase Option Date.
- c. **Determination of Fair Market Value.** "**Fair Market Value**" means the greatest of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, taking into account the present value of all associated future income streams expected to arise from the operation of the System for the remaining useful life of the System, including but not limited to the expected price of electricity, Environmental Attributes, and Tax Incentives and factoring in future avoided costs and expenses associated with the System and assuming the System is able to generate revenue for the then-remaining term of the Agreement at a price equal to the then-applicable Energy Rate and thereafter for the remaining useful life of the System at a price equal to the then fair market price for energy and (ii) Purchaser's Termination Payment. The Parties shall select a mutually acceptable nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The 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 the Parties equally. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

19. Indemnification.

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 15.c and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the gross negligent acts or omissions of, the willful misconduct of, fraud by, or criminal by the Indemnifying Party (or its contractors, agents or employees); provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the gross negligent acts or omissions of, the willful misconduct of, fraud by, or criminal acts by the Indemnified Party; provided further, however, that nothing in this Section is intended to modify the limitations of Seller’s liability set forth in Section 20. This Section 19.a however, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 19.c.
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 19.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 19.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance (as defined in Section 19.c.i) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Facility generally or any deposit, spill or release of any Hazardous Substance.
- i. **“Hazardous Substance”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any Environmental Laws, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- ii. **“Environmental Law”** means any applicable federal, state, municipal or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision implementing any of the foregoing by any Governmental Authority relating to (A) the protection of the air, water, land or natural resources or (B) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Substances.

20. **Limitations of Liability.**

- a. **No Consequential Damages.** EXCEPT WITH RESPECT TO PAYMENT OF A SELLER’S TERMINATION PAYMENT OR A PURCHASER’S TERMINATION PAYMENT, OR IN CONNECTION WITH THIRD-PARTY INDEMNIFICATION CLAIMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

- b. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed an amount equal to the total monthly payments made by Purchaser to Seller under this Agreement in the two (2) years prior to a claim (such amount, the "**Seller Liability Cap**"). The provisions of this **Section Error! Reference source not found.** shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within two (2) years after the cause of action accrues. Any proceeds of insurance required to be maintained by Seller pursuant to **Section 15.b** that Seller actually receives from the same claim giving rise to a Purchaser claim under this agreement shall not reduce the Seller Liability Cap. The Seller Liability Cap shall not apply to the aggregate credit for Production Guarantee outlined in Section 7.k.

21. **Dispute Resolution.**

- a. **Negotiation.** The Parties, through their respective senior management, 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 twenty (20) business days after the date that a Party gives written notice of such Dispute to the other Party.
- b. **Arbitration.** In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to **Section 21.a** above, the Dispute shall then be settled by final, binding arbitration pursuant to the U.S. Federal Arbitration Act, 9 U.S.C. Section 1 et seq., in accordance with the Judicial Arbitration and Mediation Services Rules. The Parties shall mutually select one arbitrator. In the event the Parties are unable to agree on an arbitrator, an arbitrator will be appointed by the American Arbitration Association in accordance with its rules. All arbitration proceedings will take place Los Angeles, California. The arbitrator will be entitled to award monetary and equitable relief, including specific performance and other injunctive relief; provided, however, that only damages allowed pursuant to this Agreement may be awarded. Except as otherwise expressly provided in this **Section 21.b**, each Party will bear the expenses of its own counsel and will jointly bear the expenses of the arbitrator. The Parties agree that the arbitrator will include, as an item of damages, the costs of arbitration, including reasonable legal fees and expenses, incurred by the prevailing party if the arbitrator determines that either (i) the non-prevailing Party did not act in good faith when disputing its liability hereunder to the prevailing Party or when initiating a claim against the prevailing Party; or (ii) the prevailing Party has had to resort to arbitration with respect to a substantially similar claim more than twice in any thirty-six (36) month period. Should it become necessary to resort or respond to court proceedings to enforce a Party's compliance with this **Section 21.b**, such proceedings will be brought in accordance with **Section 26.a** below. If the court directs or otherwise requires compliance herewith, then all costs and expenses, including reasonable attorneys' fees incurred by the Party requesting such compliance, will be reimbursed by the non-complying Party to the requesting Party.

22. **Force Majeure.**

- a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the Utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred and eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure event shall have the right to terminate this Agreement without fault or further liability to either Party (except with respect to amounts accrued but unpaid prior to termination).

23. **Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee) and (v) assign this Agreement and the System to any assignee that (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement, or will contract with parties who have such experience and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any such assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's rights and/or obligations under this Agreement shall not result in any change to Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Seller agrees to assign this Agreement only as part of an assignment of the Portfolio to a single assignee.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means a person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System or, if applicable, any person to whom Seller has transferred the ownership interest in the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 23.a, and within five (5) business days after receipt of a written request by Seller, Purchaser agrees to execute any reasonable consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

24. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including this Agreement, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other Party or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other Party, the receiving Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, (A) a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, potential lenders and purchasers, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), and (B) Meter Data shall be considered Confidential Information of Seller and not Purchaser, subject to

Seller's obligations with respect to Meter Data as set forth in Section 14.b. Any recipient of Confidential Information pursuant to clause (A) above shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 24.a, except as set forth in Section 24.b. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 24.a by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of this Section 24.a. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 24.a, but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena or pursuant to the California Public Records Act or Brown Act, (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

25. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and any related reporting rights. Notwithstanding the foregoing, Purchaser may, without Seller's consent, issue promotional or advertising materials regarding Purchaser's use of solar or renewable energy that do not identify Seller or any of its affiliates.

26. **Miscellaneous Provisions**

- a. **Choice of Law.** This Agreement will be governed by the laws of the State of California, without giving effect to conflict of laws principles that would cause the laws of another jurisdiction to apply to this Agreement.
- b. **Attorneys' Fees.** The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, or overnight courier, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, or the promised delivery date after deposit with overnight courier. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- e. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A

Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- f. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- g. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- h. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- i. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- j. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- k. **No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 23, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- l. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7.1 (Warranty Disclaimer), Section 11 (Removal of System at Expiration), Section 15.b (Remedies), Section 15.c (Representations and Warranties), Section 17.b (Insurance Coverage), Section 19 (Indemnification), Section 20 (Limitations of Liability), Section 21 (Dispute Resolution), Section 24 (Confidentiality and Publicity), Section 26.a (Choice of Law), Section 26.b (Attorneys' Fees), Section 26.c (Notices), Section 26.f (Non-Dedication of Facilities), Section 26.g (Service Contract), Section 26.h (No Partnership), Section 26.i (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 26.k (No Third Party Beneficiaries). The Parties acknowledge that if the Lease continues to be in full force and effect after the termination of this Agreement, the provisions of this Agreement that are cross-referenced in the Lease shall survive termination of this Agreement.

Exhibit 3
Attachment A
Prices for Initial Term

Contract Year	\$ per kWh
1	\$0.0978
2	\$0.0998
3	\$0.1018
4	\$0.1038
5	\$0.1059
6	\$0.1080
7	\$0.1101
8	\$0.1123
9	\$0.1146
10	\$0.1169
11	\$0.1192
12	\$0.1216
13	\$0.1240
14	\$0.1265
15	\$0.1290
16	\$0.1316
17	\$0.1343
18	\$0.1369
19	\$0.1397
20	\$0.1425
21	\$0.1453
22	\$0.1482
23	\$0.1512
24	\$0.1542
25	\$0.1573

End of Exhibit 3

Exhibit 4
Facility Real Property Description

PARCEL A:

ALL OF LOTS 3, 4, 5, 6 AND 7 OF BLOCK 53 OF TRACT NO. 2266, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN IN BOOK 32 OF MAPS, PAGES 43 TO 53, INCLUSIVE, RECORDS OF SAID COUNTY.

PARCEL B:

THE EAST 60 FEET OF LOT 12 AND ALL OF LOTS 13, 14, 15, 16, 17 AND 18 OF TRACT NO. 2109 IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS PER PLAT RECORDED IN BOOK 30, PAGE 48 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C-1:

THE NORTH 342.87 FEET OF LOT A-9, BLOCK 9, FONTANA TOWNSITE, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 53 AND 54, RECORDS OF SAID COUNTY.

EXCEPTING THE NORTH 20 FEET AS CONVEYED TO THE CITY OF FONTANA BY DEED RECORDED JULY 13, 1960 IN BOOK 5185, PAGE 97 OF OFFICIAL RECORDS; ALSO EXCEPTING THE EAST 10 FEET OF THE SOUTH 10 FEET THEREOF.

PARCEL C-2:

LOTS 1 TO 7, INCLUSIVE, BLOCK 9, FONTANA TOWNSITE, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 53 AND 54, RECORDS OF SAID COUNTY, TOGETHER WITH THE EAST HALF OF WHEELER AVENUE AS SHOWN ON SAID MAP AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, A CERTIFIED COPY OF SAID RESOLUTION BEING RECORDED OCTOBER 21, 1948, IN BOOK 2309, PAGE 554, OFFICIAL RECORDS AND BY RESOLUTION OF THE CITY OF FONTANA, A CERTIFIED COPY OF WHICH WAS RECORDED NOVEMBER 24, 1986 AS INSTRUMENT NO. 86-355438, OFFICIAL RECORDS, WHICH WOULD PASS WITH A CONVEYANCE OF SAID LOTS BY OPERATION OF LAW.

EXCEPTING THEREFROM THE SOUTHERLY 17.07 FEET OF LOT 7;

ALSO EXCEPTING THE NORTH 20 FEET AS CONVEYED TO THE CITY OF FONTANA BY DEED RECORDED JULY 13, 1960 IN BOOK 5185, PAGE 97 OF OFFICIAL RECORDS.

PARCEL C-3:

ALL OF BLOCK 8, FONTANA TOWNSITE, AS PER PLAT RECORDED IN BOOK 19 OF MAPS, PAGES 53 AND 54, RECORDS OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE WEST HALF OF WHEELER AVENUE, AS SHOWN ON SAID MAP, AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, A CERTIFIED COPY OF SAID RESOLUTION BEING RECORDED OCTOBER 21, 1948, IN BOOK 2309, PAGE 554, OFFICIAL RECORDS, AND BY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, A CERTIFIED COPY OF WHICH WAS RECORDED NOVEMBER 24, 1986 AS INSTRUMENT NO. 86-355438, OFFICIAL RECORDS, WHICH WOULD PASS WITH A CONVEYANCE OF SAID BLOCK BY OPERATION OF LAW.

ALSO EXCEPTING THEREFROM THE WESTERLY 45.5 FEET OF SAID BLOCK 8 (AS MEASURED FROM THE CENTER LINE OF SIERRA AVENUE, ORIGINALLY 60 FEET WIDE), AS GRANTED TO THE COUNTY OF SAN BERNARDINO, A BODY CORPORATE AND POLITIC, OF THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 15, 1951, IN BOOK 2716, PAGE 373,

PARCEL D:

THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, TOWNSHIP 1 NORTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN.

Exhibit 5

Purchaser's Termination Payment Schedule

Year	Termination Payment
1	\$795,808
2	\$742,944
3	\$667,394
4	\$604,190
5	\$547,986
6	\$490,019
7	\$474,656
8	\$464,610
9	\$453,311
10	\$440,668
11	\$412,378
12	\$398,085
13	\$382,229
14	\$364,698
15	\$345,376
16	\$324,136
17	\$300,844
18	\$275,359
19	\$247,528
20	\$217,189
21	\$204,630
22	\$170,075
23	\$132,544
24	\$91,836
25	\$47,731

Exhibit 6

Production Guarantee Schedule

Guarantee Period	Contract Years	Estimated Period Production (kWhr)	Guaranteed Production (kWhr)
1	1-3	1,191,101	1,131,546
2	4-6	1,173,323	1,114,657
3	7-9	1,155,811	1,098,021
4	10-12	1,138,561	1,081,633
5	13-15	1,121,568	1,065,489
6	16-18	1,104,828	1,049,587
7	19-21	1,088,338	1,033,921
8	22-23	716,520	680,694
9	24-25	709,372	673,904

Exhibit 7

Portfolio Projects Schedule

Project	Address	System Size (kW DC)
City Hall & DSO	3528, 8353 Sierra Ave, Fontana, CA 92335	246.16
Community Senior Center	16710 Ceres Ave, Fontana, CA 92335	183.60
Community Services	16860 Valencia Ave, Fontana, CA 92335	30.60
Heritage Community	16860 Valencia Ave, Fontana, CA 92335	76.50
Police Department	17005 Upland Ave, Fontana, CA 92335	777.92
Police Annex	14501 Live Oak Ave, Fontana, CA 92337	39.44
Public Works	16489 Orange Way, Fontana, CA 92335	185.64