

*Each Solar PV project is unique. This document is intended to be a **model only**. The requirements should be modified as appropriate to fit the specific project. Agency or municipal counsel must be consulted when developing a PPA for a Solar PV project.*

## **Appendix D: MODEL POWER PURCHASE AGREEMENT**

This Agreement ("Agreement" as further defined in Section 1.1) is made and entered into as of this ("Effective Date") and is witnessed and acknowledged by (Insert Company with its principal office at Insert Address) ("Provider") and (Insert Authorized User with its principal office at Insert Address) (the "Purchaser"), as evidenced by their signature on the last page of this document. Purchaser and Provider are referred to herein individually as a "Party" and collectively as the "Parties".

### **WITNESSETH:**

WHEREAS, the New York State Office of General Services ("OGS") issued Solicitation #23017 for the establishment of multiple backdrop Centralized Contracts for Solar Power Purchase Agreements; and

WHEREAS, Provider was awarded a New York State Centralized Contract # \_\_\_\_\_, which was executed between OGS and the Provider and which is attached hereto and made a part hereof as Exhibit C; and

WHEREAS, the Purchaser has conducted a Mini-Bid under the Centralized Contract and Provider has submitted a Proposal dated (Insert Date) (the "Proposal") in response to the Mini-Bid;

WHEREAS, Purchaser has awarded the Mini-Bid to Provider under Mini-Bid # \_\_\_\_\_; and

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system and the ancillary equipment associated therewith at the Premises, as defined herein, (the "System") for the purpose of providing Services, as defined herein; and

WHEREAS, Provider is willing and has agreed to provide the System under the terms and conditions of the Centralized Contract and this Agreement, subject to any revisions agreed to by the Purchaser and Provider; and

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **1. DEFINITIONS.**

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

“Actual Monthly Production” means the amount of Energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

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

“Agreement” means this Power Purchase Agreement, including the General Conditions and the Exhibits and Schedules attached hereto.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof, in a publically available and duly issued document, by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

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

“Business Day” means any day other than Saturday, Sunday or a Federal Reserve Bank holiday.

“Centralized Contract” means any contract for the purchase of commodities or services, established or approved by the Commissioner of General Services as meeting the

State's requirements, and from which, once established by OGS, State agencies and other authorized users may make purchases.

"Commercial Operation Date" has the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Covenants, Conditions and Restrictions" or "CCR" means those requirements or limitations related to the Premises as may be set forth in a lease, license, or easement, or other document related to use or occupancy, if applicable, or by any association or other organization, having the authority to impose restrictions.

"Disruption Period" has the meaning set forth in Section 4.3(b).

"Early Termination Date" means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

"Early Termination Fee" means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2.

"Energy" means electric energy measured in kilowatt-hours ("kWh") or in megawatt-hours ("MWh").

"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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 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 Environmental Incentives and Tax Credits. 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, emissions allowances, green tags tradable renewable credits and Green-e® products.

"Environmental Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology

incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated 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. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means this Power Purchase Agreement, excluding the Exhibits and Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Persons” means the Purchaser Indemnified Parties.

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

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

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 payable for the services to be provided hereunder including Energy and heat.

“Liens” has the meaning set forth in Section 7.1(e).

“Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from Standard & Poor’s Rating Group and A3 from Moody’s Investor Service, and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Option Price” has the meaning set forth in Section 2.3.

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

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

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means the day that occurs on the date that is the sixth (6<sup>th</sup>) anniversary, the tenth (10<sup>th</sup>) anniversary, and the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date, provided that if such day is not a Business Day, the Purchase Date shall be the next Business Day to occur after such day.

“Purchaser” has the meaning set forth in the Special Conditions.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

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

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

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

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

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

“Transfer Time” has the meaning set forth in Section 4.3(a).

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

1.3 Entire Agreement and Order of Precedence. This Agreement forms the entire agreement between the parties and supersedes all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. In case of a conflict or discrepancy among the elements of this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the document elements in the following order: (1) Exhibit A, Standard Clauses for New York State Contracts; (2) Exhibit C, Centralized Contract # \_\_\_\_\_; (3) Exhibit B; (4) the Schedules; (5) the General Conditions of this Agreement; [Note – this clause may be different for municipalities or other authorized users.]

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. The Initial Term is referred to collectively as the “Term.”

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days’ prior written notice. In such event, Purchaser shall pay, as liquidated damages, an amount equal to (i) the Early Termination Fee set forth on Schedule 3, (ii) any and all other amounts previously owed to Provider under this Agreement, and (iii) the cost of removing the System provided that Provider shall use all commercially reasonable efforts to obtain the lowest cost of System removal, subject to reasonable business and safety concerns. Upon such payment, Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically without further liability to either Party with respect to the Agreement.

2.3 Determination of Fair Market Value. If or when required, Fair Market Value of the System will be determined by Provider in a commercially reasonable manner. If Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the commercial-scale photovoltaic industry. Such appraiser shall subject to applicable Internal Revenue Service processes and requirements act in a commercially reasonable manner and in good faith to determine the Fair Market Value of the System as of the applicable Purchase Date and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to this Section; otherwise, the Parties shall equally share such cost.

2.4 Removal of System at Expiration. Upon the expiration or earlier termination of the Agreement, Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than one hundred and twenty (120) days after the Expiration Date. The Premises shall be returned to its original condition. 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. For purposes of Provider’s removal of the System, Purchaser’s covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider 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 and dispose at Provider’s cost.

2.5 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination: (a) the Provider determines that the Premises, as is, is insufficient to accommodate the System; (b) there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed; (c) there is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors; (d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it; (e) Provider has not received a fully executed (i) license substantially in the form of Exhibit B from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d) (ii) to ensure that Provider will have access to the Premises throughout the Term; (f) there has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises; (g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available pursuant to the scheduled in-service date of the System agreed to herein with respect to Energy generated by the System under a net-metering arrangement mutually agreeable to the Parties, subject to applicable law and the utility's requirements; or (h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

### **3. PURCHASER RIGHT TO REVIEW CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1, Applicable Law, and consistent with generally accepted utility practices. Purchaser shall have the right to review and comment on all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise agreed to in writing by the owner of the Premises. Installation Work shall be conducted in a manner that minimizes inconvenience to and interference with the use of the Premises to the maximum extent commercially practical. Provider shall consult with the issuer of any warranty on the roof at the Premises, if applicable, and shall construct the System in a way that does not invalidate any such warranty.



3.2 Approvals; Permits. Provider shall secure and maintain, at its own expense, all permits, including but not limited to environmental permits, licenses, and those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR. If Purchaser is a New York State Agency, OGS Design & Construction division, or other State construction-permitting agency as defined in 19 NYCRR 1204.3(e), shall provide all Uniform Code services which shall include (i) the issuances of all permits and certificates, (ii) inspections, and (iii) reporting.

3.3 System Acceptance Testing. (a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by commercial solar photovoltaic energy system integrators and operators in the United States. (b) If the results of such testing indicate that the System is capable of generating Energy for at least four (4) consecutive hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility and any other Governmental Authority from whom approval is required to operate the System, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

#### **4. SYSTEM OPERATIONS.**

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's negligence, willful misconduct, or breach of its obligations hereunder or as otherwise provided for in this Agreement, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar capability to accommodate the System, or (ii) terminate the Agreement pursuant to Section 2.2. In connection with such substitution, Purchaser and Provider shall amend this Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing Party in connection with the substitute premises. If Purchaser is unable to obtain such consents and releases for a substitute premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all reasonable costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System

from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider's Financing Party in the System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, at the Purchaser's expense, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Services as if Provider was capable of operating the System during any transfer or construction time period (the "Transfer Time") and shall reimburse Provider for any actual, documented lost or recaptured revenue associated with lost production of Environmental Attributes during the Transfer Time. For the purpose of calculating Services Payments that would have otherwise been due and Environmental Attributes that would have been generated during such Transfer Time, Services shall be deemed to have been produced during the Transfer Time at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Transfer Time.

(b) System Disruptions. In the event that (1) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (2) any act or omission of Purchaser or Purchaser's employees, Affiliates, or agents (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Services during such period of System disruption (the "Disruption Period") as if Provider was capable of operating the System during such Disruption Period, and (iii) reimburse Provider for any actual, documented lost or recaptured revenue associated with lost production of Environmental Attributes during the Disruption Period. For the purpose of calculating Services Payments that would otherwise have been due for such Disruption Period, Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Disruption Period.

## **5. DELIVERY OF SERVICES.**

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100 %) of the Energy generated by the System during each relevant month of the Term at

the kWh Rate specified in Schedule 2. The Energy delivered by Provider to Purchaser hereunder shall be referred to as “Services”.

5.2 Estimated Annual Production. The annual estimate of Energy generation with respect to the System for any given year as determined pursuant to this Section shall be the “Estimated Annual Production.” The Estimated Annual Production for each year of the Term is set as forth in Schedule 4.

5.3 NYSERDA is the owner of all Environmental Attributes, and Provider is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives, or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Provider. Purchaser shall cooperate with Provider in obtaining, securing and transferring all Environmental Attributes to NYSERDA, and Environmental Incentives and the benefit of all Tax Credits to Provider, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by NYSERDA or Provider, as the case may be. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Provider. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser shall submit to Provider for approval any press releases regarding Purchaser’s use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Provider. Approval shall not be unreasonably withheld, and Provider’s review and approval shall be made in a timely manner to permit Purchaser’s timely publication.

5.4 Title to System. Throughout the Term, Provider or Provider’s Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider’s Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. 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 will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises 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 Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider’s request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser agrees to file, at the request of Provider and at Provider’s sole expense a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner Purchaser will, at Provider’s request, use commercially reasonable efforts to obtain such agreement to file from such owner or consent of such owner to have Provider make such filing on its behalf; provided that such filing will be made at Provider’s request and at Provider’s sole expense.

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## **6. PRICE AND PAYMENT.**

6.1 Consideration. Purchaser shall pay to Provider a monthly payment for the Services provided during each month in an amount equal to the Energy generated by the System and delivered to Purchaser in such month, multiplied by the kWh Rate stated in Schedule 2 for the applicable contract year in which such month occurs ("Services Payment").

In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser shall terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider. Interest for any unpaid balance will accrue pursuant to Section 179 (G) of New York State Finance Law that is 30 days past due. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges.

6.5 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, provided that Purchaser shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue on such amount pursuant to Section 179 (G) of New York State Finance Law from the date becoming past due under such invoice until the date paid.

## **7. GENERAL COVENANTS.**

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Purchaser if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement; and (iii) within 10 calendar days, provide Purchaser with a remedial action

plan to repair, replace, cure, or correct the damage, loss, event, or circumstance, as the case may be, in order to restore the System to its normal operating state.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider, and to enable Provider to perform such obligations, including without limitation, Uniform Code permits and approvals.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Services, and System Operations and shall comply with all applicable laws and site specific requirements pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

**7.2 Purchaser's Covenants.** Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.

(b) Liens. Other than as provided for in this Agreement, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein.

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

(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider a commercial license (the "License") commencing on the Effective Date and, subject to Purchaser's right to revoke the License as described herein, continuing until the date that is one hundred and twenty (120) days after the expiration or termination of this Agreement (the "License Term"), containing all the rights necessary for Provider to use and occupy portions of the Premises (the "License Area") for the installation, operation

and maintenance of the System pursuant to the terms and conditions of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. During the License Term Purchaser shall ensure that Provider's rights under the License and Provider's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (i) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (ii) neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider (except in cases of emergency); provided, however, that Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal. Notwithstanding anything to the contrary in this Agreement, Purchaser may, at any time during the Term, upon 60 days' prior written notice to Provider, revoke the License, provided that any such revocation of the License, except for a revocation for a Provider Default, shall act as an early termination of this Agreement pursuant to Section 2.2.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement for sufficient space at the Premises 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 the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Insolation. Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Provider'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 relative to the conditions at the time of installation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Provider immediately and shall cooperate with Provider in preserving the System's existing Insolation levels.

## **8. REPRESENTATIONS & WARRANTIES.**

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

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and shall maintain such right and authority throughout the Term;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable

bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or, in the case of Provider, any of its Affiliates is a party or by which it or, in the case of Provider, any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

**8.2 Representations Regarding Security Interest.** Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) to Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement or security agreement affecting the Premises;

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein;

(c) to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement. Any Financing Party shall be an intended third party of this Section 8.2.

**8.3 EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**

## **9. Reserved**

## **10. FORCE MAJEURE.**

**10.1 Definition.** "Force Majeure Event" means and includes, but is not limited to, any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (provided that the claiming Party shall not be required to suffer prejudice or use commercially unreasonable measures to remedy a Force Majeure event). Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Provider or the Purchaser in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented. A Force Majeure Event shall not be based on the economic hardship or financial condition of

either Party. Force Majeure shall not be based on (i) Purchaser's inability economically to use or resell the Services purchased hereunder; or (ii) the loss or failure of Provider's equipment, supplies, or products.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall: (i) promptly notify the other Party in writing of the existence of, and details regarding, the Force Majeure Event; (ii) exercise all reasonable efforts necessary to cure or correct the Force Majeure Event and to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not affected by Force Majeure shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the affected Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

## **11. DEFAULT.**

### **11.1 Provider Defaults and Purchaser Remedies.**

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"): (i) A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within ten (10) Business Days from receipt of notice from Purchaser of such past due amount; (iii) Provider breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.1 as a separate Provider Default) and such breach or failure is not cured within thirty (30) days after Purchaser's written notice of such breach or failure; (iv) any representation or warranty made in this Agreement by Provider is not true and complete in any material respect when given or at any time during the Term; (v) INTENTIONALLY OMITTED; and (vi) Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Purchaser.



(b) **Purchaser's Remedies.** If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, between the Fair Market Value of the Services anticipated to be provided over the remaining Term, as determined by Purchaser in a commercially reasonable manner, and the Services Payments associated with such Services ("Termination Amount"). Upon termination of this Agreement in accordance with this Section, Purchaser shall promptly calculate the Termination Amount, if any, owed by Provider and submit an invoice to Provider for such amount. Provider shall pay such Termination Amount within ten (10) Business Days after receipt of such invoice in accordance with the payment directions specified by Purchaser ("Termination Amount Payment Date"). In the event Provider, in good faith, disputes Purchaser's calculation of the Termination Amount, the Parties shall then act in good faith to resolve any such dispute, including but not limited to, utilizing a procedure substantially similar to that provided for in Section 2.3 above, in the event that the Parties are unable to resolve such dispute; provided, however, that if through such procedures the Termination Amount is determined to be equal to or greater than that calculated by Purchaser, Provider shall pay all costs associated with such procedure, or otherwise the Parties shall share such costs equally.

(c) **No Early Termination Fee.** Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

## 11.2 Purchaser Defaults and Provider's Remedies.

(a) **Purchaser Default.** The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"): (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.2 as a separate Purchaser Default) and such breach or failure is not cured within thirty (30) days after Provider's written notice of such breach or failure; (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within ten (10) days from receipt of notice from Provider of such past due amount; (iv) any representation or warranty made in this Agreement by Purchaser is not true and complete in any material respect when given or at any time during the Term; and (v) Purchaser consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Purchaser under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Provider.

(b) **Provider's Remedies.** If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, and Provider shall be entitled to receive from Purchaser, as liquidated damages, an amount equal to the sum of (i) the Early Termination Fee pursuant to

Section 2.2, (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider, and (iii) removal costs as provided in Section 11.3.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.4 hereof at the expense of the defaulting Party.

## **12. LIMITATIONS OF LIABILITY.**

12.1 The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive damages. Unless expressly herein provided, neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract or otherwise. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Notwithstanding the foregoing, Provider shall remain liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of the provider, its officers, employees or agents.

## **13. ASSIGNMENT.**

13.1 Assignment by Provider. Pursuant to section 138 of the New York State Finance Law, the Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider; (ii) assign, mortgage, pledge or otherwise collaterally assign this Agreement in connection with any financing of the System (including pursuant to a sale-leaseback transaction), (iii) assign this Agreement to any entity through which Provider is obtaining financing or capital for the System, and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Provider (provided that Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Provider's obligations hereunder by the assignee); provided, however, that in each case, any assignee shall agree in writing to be bound by the terms and conditions of this Agreement and so long as the Provider, or the successor by way of merger of Provider, delivers such tax and enforceability

assurance as Purchaser may reasonably request. In the event that Provider identifies such secured Financing Party in Schedule 5, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Purchaser shall not release Provider of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5, or in a subsequent notice to Purchaser, then Purchaser hereby: (a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement; (b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement within the timeframes specified herein with respect to Provider; (c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System. Any Financing Party shall be an intended third party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser may assign or transfer this Agreement to any other New York State agency, authority, or public benefit corporation that is the successor in interest of the Purchaser and that is backed by the full faith and credit of the State of New York without the Provider's prior consent, provided that (a) Purchaser shall promptly notify Provider of any such assignment in writing, (b) such assignee shall assume all of Purchaser's obligations under the Agreement in writing; and (c) such assignment shall in no event compromise the tax treatment of this Agreement or the Provider. Any assignment that does not comply with the forgoing shall be invalid. Purchaser shall not sell, transfer or assign the Agreement or any interest therein to any entity other than a New York State agency, authority, or public benefit corporation, as set forth in this section, without the prior written consent of Provider, which shall not be unreasonably withheld, conditioned or delayed.

## **14. NOTICES.**

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted electronically or by facsimile, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above if received during normal business hours on a

Business Day or otherwise such notice shall be deemed delivered on the next Business Day.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

**15. CONFIDENTIALITY.** *(This Article may be replaced or supplemented by a Non-disclosure agreement agreed to by the Parties.)*

15.1 Confidentiality Obligation. If either Party provides confidential information, plainly marked as such on the subject document(s), including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of its performance of this Agreement, or if in the course of negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, and said information is identified by the disclosing party as Confidential, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may with the consent of the other Party (such consent not to be unreasonably conditioned, delayed or withheld), provide such Confidential Information to its officers, directors, members, managers, employees, agents, attorneys, accountants and consultants, Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case, whose access is reasonably necessary. Each such recipient of Confidential Information 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 its Representatives. 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.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (a) becomes publicly available other than through the receiving Party or its Representatives; (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (c) is independently developed by the receiving Party; or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. The Parties acknowledge that this Agreement is subject to the New York

State Freedom of Information Law (“FOIL”) as set forth in Article 6 of the New York State Public Officers Law, and that only Provider’s proprietary information that satisfies the requirements of § 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

15.3 Goodwill and Publicity. Neither Party shall use the 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. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, the Parties agree that either Party may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser’s prior written authorization. Purchaser may share or publicly display photographs of the System or performance data.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 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 is entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

## **16. INDEMNITY.**

16.1 Provider’s Indemnity. Subject to Article 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the “Purchaser Indemnified Parties”) from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim by a third party for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider’s negligence or willful misconduct or (b) any claim by a third party regarding any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System

Operations, and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Purchaser or of its officers or employees when acting within the course and scope of their employment. This Agreement shall be deemed executory only to the extent monies are appropriated and available for the purpose of the contract, and no liability on account hereof shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. [Note – this clause may be different for municipalities or other authorized users.]

## **17. INSURANCE.**

17.1 Generally. Provider shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) A professional liability policy (errors and omissions) in the amount of Five Million Dollars (\$5,000,000) which shall be maintained for a period of three (3) years after completion of this contract. If said policy is issued on a claims-made policy form, the policy shall be purchased with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed; (b) Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board, (c) General Liability Insurance with limits no less than One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000 in the aggregate. Such policy shall name the Purchaser as an additional insured and shall designate the Purchaser as the loss payee, and shall contain a provision that the Purchaser shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy, and (d) Business Automobile Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least One Million Dollars (\$1,000,000) and shall name the Purchaser as additional insured. The limits may be provided through a combination of umbrella/excess liability policies. Additionally, Provider shall carry adequate property loss insurance on the System. The amount and terms of insurance coverage will be determined at Provider's sole discretion.

17.2 Certificates of Insurance. Upon Purchaser's request, Provider shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. The insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the Purchaser thirty (30) days' written notice before the insurance is cancelled or materially altered, ten (10) days' notice in case of a termination or cancellation due to non-payment of premium. Purchaser is self-insured for its general liability exposure, workers compensation and automobile liability. In accordance with Article II of the New York Court of Claims Act, it shall be liable for damage or injury arising from negligent actions caused by an officer of the Purchaser or its employees acting within the scope of their respective employment, Purchaser's self-insured funds could be drawn down if: (a) a judgment of liability is made under the provisions of the New York Court Claims Act, or in the case of small claims, an acknowledgement of liability has been made by the Attorney General and the Comptroller of the State of New York. The State's obligation with respect to any such claims are subject to the availability of lawful appropriations, as required by Section 41 of the New York State Finance Law. Purchaser agrees to notify Provider of any material change of the status of Purchaser's self-insurance with at least thirty (30) days' prior written notice. [Note – this clause may be different for municipalities or other authorized users.]

17.3 Additional Insureds. Provider's Commercial General Liability insurance policy shall be written on an occurrence basis and shall include the Purchaser as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies authorized by the New York Department of Financial Services to issue insurance in the State of New York ("admitted carriers") with an A.M. Best Company rating of "A-" or better, or having a parent company's debt to policyholder surplus ratio of 1:1.

## **18. MISCELLANEOUS.**

18.1 Intentionally Omitted.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser and, if Purchaser is a State agency, approved by the New York State Attorney General and Office of the State Comptroller.

18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Intentionally Omitted

18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Sections 2.2 (Early Termination), 2.4 (Removal of System), Article 7 (General Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 17 (Insurance), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law § 5-1401. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in New York.

18.8 Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Purchaser and Provider, or between either or both of them and any other Party.

18.9 Third-Party Beneficiaries. Except as expressly provided herein to the contrary, this Agreement is intended solely for the benefit of the Parties thereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party thereto.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18.11 Forward Contract; Service Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. The payment of the Termination Amount or Early Termination Fee made or to be made by one Party to the other Party under this Agreement constitutes a “settlement payment” and/or a “transfer” under the United States Bankruptcy Code. This agreement constitutes a “master netting agreement” and each party is a “master netting agreement participant” within the meaning of the United States Bankruptcy Code. 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 will 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.

18.12 Iran Divestment. By entering into this Agreement, Provider certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The



New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that in the performance of this Agreement, it will not utilize any subcontractor that is identified on the Prohibited Entities List. Provider agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time of renewal or extension. Provider also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before Purchaser may approve any request for assignment of this Agreement. During the term of the Agreement, should Purchaser receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Purchaser will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Purchaser shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Provider in default. Purchaser reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of this Agreement, and to pursue a responsibility review with Provider should it appear on the Prohibited Entities List hereafter. (Note – this clause may be different for municipalities or other authorized users.)

#### **18.13 Grounds to Termination for Provider's Responsibility.**

(a) General Responsibility. Provider shall at all times during the Term remain responsible, as that term is defined in section 163 of the State Finance Law or article 5-a of the General Municipal Law. Provider agrees, if requested by Purchaser or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance and organizational and financial capacity.

(b) Termination (for Non-Responsibility). Upon written notice to Provider, and a reasonable opportunity to be heard before appropriate officers or employees of the Purchaser, this Agreement may be terminated by the Purchaser at Provider's expense, where Provider is determined by the Purchaser to be non-responsible. In such event, the Purchaser may complete the scope of work or contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**18.14 Non-Appropriation Event:** It is the present intention and expectation of the Purchaser that the applicable budgetary entity, within the limits of available funds and revenues, will make an appropriation of a sufficient amount to fund Purchaser's obligations hereunder during each fiscal year of the Term; provided, however, this declaration of intent shall not be binding upon any future applicable budgetary entity in any future fiscal year, except to the extent of any previously appropriated funds.

Purchaser shall use reasonable good faith efforts to have funds properly budgeted, appropriated, allotted, or otherwise made available for this Agreement (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner. All payments made by Purchaser under this Agreement shall constitute currently budgeted expenditures and shall not constitute or give rise to a general obligation debt, an indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of any constitutional or statutory provisions or limitation.

(a) If an appropriation for this Agreement is not made for Purchaser by the applicable budgetary entity for any fiscal year of Purchaser during the Term (a "Non-Appropriation Event"), Purchaser shall promptly give notice of such Non-Appropriation Event (the "NAE Notice"). Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of the NAE Notice, Purchaser will not interrupt or impair the delivery of Energy or jeopardize Provider's sale, transfer or other monetization of Environmental Incentives or Tax Credits.

(b) Following receipt by Provider of an NAE Notice, Provider, in its sole discretion, (i) may terminate this Agreement and remove the System, or (ii) may continue to operate the System and deliver the Energy to Purchaser or to a third party or utility company without payment by Purchaser therefore during the applicable fiscal year (and each fiscal year thereafter until an appropriation of made). Under the circumstances of (ii), other than with respect to the obligation to make payment for energy delivered, all obligations of Purchaser under this Agreement shall remain in full force and effect. Should Purchaser receive an appropriation for this Agreement during the continuation of the Non-Appropriation Event, before termination under option (i) has been exercised, Purchaser shall pay such monies to Provider as to make Provider whole for any amounts due and owing under this Agreement to the extent practicable, and upon payment such Non-Appropriation event shall be nullified.

(c) Within 30 days of Provider's receipt of the NAE Notice, Provider shall give notice to Purchaser of Provider's election among options (i) and (ii) under subsection (b) above. If Provider does not provide notice to Purchaser of Provider's election under this subsection (c) within such period, Provider shall be deemed to have elected option (ii) under subsection (b) above, provided that, if Provider elects or is deemed to have elected option (ii) it may subsequently change its election at any time upon prior written notice to Purchaser.

(d) If Provider elects option (i) under subsection (b) above, Provider shall cause the System to be disconnected and removed from the Site and Purchaser shall pay to Provider all reasonable removal costs within 30 days after receiving Provider's invoice for such removal costs.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

PROVIDER: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PURCHASER: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK                    )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK                    )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Exhibit A**

[Document to follow this introductory page.]

Insert: Appendix A – Standard Clauses for New York State Contracts

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**Exhibit B**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. Any such financing shall be conducted in accordance with the terms and conditions of the Agreement. In order to facilitate such necessary sale, conveyance or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

- (a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement, with such sale or conveyance to be conducted in accordance with Section 13.1 of the Agreement.
- (b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default.
- (c) Rights upon Event of Default. Notwithstanding any contrary term of this Agreement:
  - (i) the Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the Agreement in accordance with the terms of the Agreement as if the Financing Party were the Provider and only in the event of a Provider Default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the System;
  - (ii) the Financing Party shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreement as if such Financing Party were Provider; and
  - (iii) upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of the Agreement, which shall be conducted in accordance with Section 13.1 of the Agreement as if the

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Financing Party were the Provider. Any such exercise of remedies shall not constitute a default under this Agreement.

(d) Right to Cure.

- (i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right. As provided for in Section (c) of this Exhibit B, the Financing Party shall have the right to cure any Provider Default within the time periods specified within the Agreement as if the Financing Party were the Provider.
- (ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i) of this Exhibit B above, cure all defaults under the Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under the Agreement, and the Agreement shall continue in full force and effect.

## **EXHIBIT C**

### **Centralized Contract**

[Document follows this introductory page]

Insert: Contract No. \_\_\_\_\_ between Provider and New York State Office of General Services (“OGS”).



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**Schedule 1: Description of Premises and System****System Premises:****Anticipated Rebate or Subsidy:**

- New York State Energy Research and Development Authority's PON # \_\_\_\_
- Incentive Amount =

**System Size(kW):****Equipment:**

- Racking:
- Modules:
- Inverter:
- Monitoring:

**Scope:****Provider Responsibilities**

- Design Preparation:** Inspect the proposed System mounting site to assure long-term safety and stability, including any structural analysis or geotechnical analysis as appropriate.
- Rebate:** Prepare all rebate documentation and communicate with all relevant agencies, if applicable.
- Design:** Produce and provide CAD single-line electrical and layout drawings of the System. Drawings will consist of a complete site plan showing the location of the array, inverters, and routing of conduits, an elevation showing panel visibility from the street, and any details necessary for the plan check and permitting.
- Pre-installation Conference:** Before System installation, conduct a pre-installation conference at the project site to review procedures, schedules, safety, and coordination of the installation. Several conferences may be needed if the complexities and construction schedules so require.
- Procurement, Installation:** Furnish all necessary mounting hardware, photovoltaic modules, electrical equipment, and labor for installation of the System up to the utility grid interconnection point[s] as indicated in this Agreement.
- Permits:** Obtain all permits required to perform the Work.
- Interconnection:** Obtain interconnection agreement and include any necessary interconnection equipment.
- Inspections:** Serve as the owner's representative for applicable System inspections.

- i) **Site Safety:** Jobsite safety meetings once per week during Installation Work, or upon addition of new personnel to the jobsite.
- j) **Site Access:** During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider's Work.
- k) **Acceptance Testing and System Commissioning: Provider shall:**
  - i. Conduct an inspection, test and commissioning procedure to insure that the System is installed in a professional manner and consistent with prudent industry practices. A record of the installation and the major components including modules, inverters, transformers and source circuit combiners will be documented in a test and commissioning report.
  - ii. Test and verify that all non-current-carrying metal parts are solidly grounded and all equipment and System grounding is installed and functional per NEC 2008 or most current version.
  - iii. Test and verify that phase sequencing, fuse continuity, and open circuit voltage are within the manufacturers recommended range at the DC disconnect.
  - iv. Test and verify that the inverter is operating effectively within the typical start up time and record the DC operating voltage, phase currents and inverter power.
  - v. Provide complete operation and maintenance manual for the System (two printed copies and one electronic copy). The manual will include: (i) as-built drawings, (ii) as-built shop drawings, (iii) a copy of any required submittals or filing, (iv) product cut sheets, (v) product operation manuals, (vi) a copy of the photo record, (vii) written Utility approval, (viii) product warranties; and (ix) supplier and installer contact information.
- l) **Solar Monitoring System:** Every Provider's System comes standard with MONITORING DEVICE\_\_\_\_\_proprietary solar monitoring service. MONITORING DEVICE enables Provider to continuously monitor the key performance variables of the System and transmit this data to Provider's servers through the Internet. All systems will be accessible through a single data access including system-level and aggregated system data. Any additional third-party monitoring, network access or data feed will be cost and responsibility of Purchaser. Provider will allow for integration of additional monitoring to enable purchaser to assess and display data for educational purposes as needed.

## **2. Purchaser Responsibilities**

- a) **Site Preparation:** Responsible for pre-installation site clean-up including removal of all debris and obstacles that may impede System installation.
- b) **Site Access:** Responsible for security access to the System after installation. During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider's Work.

- c) **Existing Facilities:** Provide all available design and as-built drawings of the existing facilities to facilitate System design and installation.
- d) **System Management:** Provide a single point of contact for each installation. Purchaser point of contact shall have authority for all written requests for project changes and shall be available on 24 hours' notice. In the event that Provider is providing its services as a subcontractor and its work is part of a larger program, Purchaser will keep Provider informed about the overall progress of the program for which Provider's work is a part, and coordinate Provider's work with the work being performed by Purchaser's other contractors, including giving Provider sufficient advance notice (at least 5 business days) of when Provider is to perform the work under this Agreement. The foregoing shall not limit Purchaser's obligations under the terms and conditions of this agreement.

### 3. **Clarifications**

- a) **Work Hours:** Provider's standard work hours are Monday through Friday 7am to 5:30pm unless otherwise agreed and approved by Provider's System Manager.
- b) **Included in pricing:** Provider's Performance Warranty or Guarantee, if applicable, Installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system). Payment of prevailing wage labor.
- c) **Exclude in pricing:** Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to Purchaser or utility electrical infrastructure, payment bonds, performance bonds, tree removal, tree trimming, the payment of special labor wages (i.e. union wages not required).

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**Schedule 2 - kWh Rate**

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate (\$/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

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**Schedule 3 – Early Termination Fee & Option Price**

The Early termination Fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2 of the General Conditions shall be equal to the sum of (i) reasonable compensation, on a net after tax basis assuming a tax rate of 35%, for the loss or recapture of (A) the investment tax credit equal to thirty percent (30%) of the System value; and (B) MSCRS accelerated depreciation equal to eighty five percent (85%) of the System value, (C) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Provider pursuant to the terms of this Agreement (Provider shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (D) other financing and associated costs not included in (A), (B) and (C), (ii) the net present value of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (iii) removal costs and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider.

#### **Schedule 4 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

The values set forth in this table are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

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**Schedule 5 – Identification of Provider’s Financing Party**

Provider shall provide Purchaser with notice information for any Financing Party within a reasonable time after such Financing Party assumes any interest in the System.

## **Schedule 6 – Notice Information**

### **Purchaser:**

*With a copy to:*

#### **Provider:**

COMPANY

ADDRESS

CITY STATE ZIP CODE

PHONE

FAX

EMAIL

*With a copy to:*

### **Financing Party:**

[To be provided by Provider if applicable and when known]