

DIXON PUBLIC SCHOOLS #170

"A Place to Grow"

www.dps170.org

1335 Franklin Grove Road
Dixon, Illinois 61021

Phone: (815) 373-4966
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Margo Empen, Superintendent
Doug Stansford, Asst. Superintendent
Marc Campbell, Business Manager

Date: January 16, 2026
To: Board of Education Members
From: Margo Empen, Superintendent & Marc Campbell, Chief School Business Official
RE: Solar One PPA Approval

In November 2025, the Board official approved a contract with Solar One for the installation of solar at four of our locations; Washington, Jefferson, Reagan/Madison, and DHS. At the time, the PPA agreement was in one single document for the district. Officially, the PPA agreements need to be broken out to each location for a variety of reasons including; SREC allocations, interconnection documents, metering, and overall operations.

Attached are the individual PPA agreements. These agreements contain the same contract language and have been reviewed by the District's attorney. The difference in these documents are the individualized locations, energy allocation changes per location, and any final adjustments that were made in engineering. Exhibit #1 and Exhibit #2 outline these changes. Exhibit 3 is the same in all four agreements, but has only been provided once in your packet.

As a general update on the process, Solar One has made the Hold Harmless payment which is ultimately some level of equipment procurement has occurred. The necessary documentation has been submitted through the Illinois Shines program, which is the SRECs process with the state. They have been on site finalizing engineering and we expect final drawings in the next few weeks.

It is the recommendation of District Administration that the Board approve the Power Purchase Agreements (PPA) with Solar One.

Dixon Public Schools, in cooperation with the community, will provide students with a comprehensive educational program that produces well-educated, self-sufficient, and involved citizens.

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Solar Power Purchase Agreement

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

Purchaser:	Dixon Public Schools	Seller:	President Solar, LLC
Name and Address	Attention: Dixon Public Schools 1335 Franklin Grove Road Dixon, IL 61021	Name and Address	President Solar, LLC 221 W Houston Street Sherman, Texas 75090 Attention: Aaron Wilson
Phone	815-373-4966	Phone	(903) 870-9052
Fax		Fax	(903) 893-3522
E-mail	mcampbell@dps170.org	E-mail	awilson@solar-one.com
Premises Ownership	Purchaser owns and Seller leases the Premises as defined in Exhibit 2 at: 800 4th Street, Dixon, IL 61201	Additional Seller Information	A Texas limited liability company
Tax Status			
Project Name	CUSTOMER Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising a portion of Purchaser’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

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

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2</u>	System Description, Delivery Point and Premises
<u>Exhibit 3</u>	General Terms and Conditions

Purchaser:
Dixon Public Schools

DocuSigned by:

Signature:

Marc Campbell

Printed Name:

Marc Campbell

Title:

CSBO

Date: 12/31/2025

Seller:
President Solar, LLC

DocuSigned by:

Signature:

Aaron Wilson

Printed Name:

Aaron Wilson

Title:

Chief Executive Officer

Date: 12/31/2025

Exhibit 1

Pricing

1. **Initial Term:** Seven (7) years, beginning on the Commercial Operation Date (the “Initial Term”). Contract Price:

Contract Year	\$/kWh
1	\$0.036
2	\$0.036
3	\$0.036
4	\$0.036
5	\$0.036
6	\$0.036
7	\$0.036

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

2. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:

- a. Interconnection costs for the System will be paid by Seller.
- b. All prices in this Agreement are calculated based on successfully receiving the Illinois Shines SREC approval, City of Dixon permit approval/s for the System/s, and placement of the Investment Tax Credit benefits. If any one of the Illinois Shines SREC approval, City of Dixon permit approval, or the placement of the Investment Tax Credit benefits are not successfully received, Either Party may terminate this Agreement with no penalty at Either Party’s discretion.
- c. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of **Exhibit 3**) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).

3. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:

- a. Upgrades or repair to Purchaser or utility electrical infrastructure (including: Purchaser or utility service, transformers, substations, poles, breakers, reclosers, and disconnects), except such repair as may be required by Seller’s damage to such infrastructure.

4. **Termination Payment Schedule (Exhibit 3, Section 11(b)):**

Contract Year	Termination Payment (\$)
1	\$812,406.00
2	\$654,021.85
3	\$565,672.70
4	\$477,323.54
5	\$388,974.39
6	\$208,877.58
7	\$173,736.74

Exhibit 2
System Description, Delivery Point and Premises

1. System Location and Size (DC/kW): 800 4th Street, Dixon, IL 61201 - 280.14kW
2. System Size (DC kW): 280.14kW DC
3. System Description (Expected Structure, Etc.): Seller shall design, construct, and maintain the roof-mounted solar arrays previously described herein as the system, to be situated at CUSTOMER more specifically described in Exhibit 2 Section 4 as the Premises.
4. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable): the rooftop of the following as depicted in the images below;
 - b. Proposed System location (as depicted below);
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs etc.); and

Schedule A

(to be added upon final design approval by the Parties)

Solar Power Purchase Agreement

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


Purchaser:	Dixon Public Schools	Seller:	President Solar, LLC
Name and Address	Attention: Dixon Public Schools 1335 Franklin Grove Road Dixon, IL 61021	Name and Address	President Solar, LLC 221 W Houston Street Sherman, Texas 75090 Attention: Aaron Wilson
Phone	815-373-4966	Phone	(903) 870-9052
Fax		Fax	(903) 893-3522
E-mail	mcampbell@dps170.org	E-mail	awilson@solar-one.com
Premises Ownership	Purchaser owns and Seller leases the Premises as defined in Exhibit 2 at: 703 East Morgan Street, Dixon, IL 61201	Additional Seller Information	A Texas limited liability company
Tax Status			
Project Name	CUSTOMER Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the "**System**") and installed on the real property comprising a portion of Purchaser's premises described or depicted in Schedule A to **Exhibit 2** (the "**Premises**"), including any buildings and other improvements on the Premises other than the System (the "**Improvements**").

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

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2</u>	System Description, Delivery Point and Premises
<u>Exhibit 3</u>	General Terms and Conditions

Purchaser:
Dixon Public Schools

DocuSigned by:

Signature: _____
Printed Name: Marc Campbell
Title: CSBO
Date: 12/31/2025

Seller:
President Solar, LLC

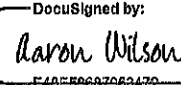
DocuSigned by:

Signature: _____
Printed Name: Aaron Wilson
Title: Chief Executive Officer
Date: 12/31/2025

Exhibit 1**Pricing**

1. **Initial Term:** Seven (7) years, beginning on the Commercial Operation Date (the “Initial Term”). Contract Price:

Contract Year	\$/kWh
1	\$0.036
2	\$0.036
3	\$0.036
4	\$0.036
5	\$0.036
6	\$0.036
7	\$0.036

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

2. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:

- a. Interconnection costs for the System will be paid by Seller.
- b. All prices in this Agreement are calculated based on successfully receiving the Illinois Shines SREC approval, City of Dixon permit approval/s for the System/s, and placement of the Investment Tax Credit benefits. If any one of the Illinois Shines SREC approval, City of Dixon permit approval, or the placement of the Investment Tax Credit benefits are not successfully received, Either Party may terminate this Agreement with no penalty at Either Party’s discretion.
- c. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of **Exhibit 3**) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).

3. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:

- a. Upgrades or repair to Purchaser or utility electrical infrastructure (including: Purchaser or utility service, transformers, substations, poles, breakers, reclosers, and disconnects), except such repair as may be required by Seller’s damage to such infrastructure.

4. **Termination Payment Schedule (Exhibit 3, Section 11(b)):**

Contract Year	Termination Payment (\$)
1	\$675,700.00
2	\$543,967.63
3	\$470,485.25
4	\$397,002.88
5	\$323,520.50
6	\$173,729.12
7	\$144,501.54

Exhibit 2
System Description, Delivery Point and Premises

1. System Location and Size (DC/kW): 703 East Morgan Street, Dixon, IL 61201 - 233kW
2. System Size (DC kW): 233kW DC
3. System Description (Expected Structure, Etc.): Seller shall design, construct, and maintain the roof-mounted and ground mounted solar arrays previously described herein as the system, to be situated at CUSTOMER more specifically described in Exhibit 2 Section 4 as the Premises.
4. **Delivery Point and Premises:** Schedule A to this Exhibit 2 contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable): the rooftop of the following as depicted in the images below;
 - b. Proposed System location (as depicted below);
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs etc.); and

Schedule A

(to be added upon final design approval by the Parties)

Solar Power Purchase Agreement

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

Purchaser:	Dixon Public Schools	Seller:	President Solar, LLC
Name and Address	Attention: Dixon Public Schools 1335 Franklin Grove Road Dixon, IL 61021	Name and Address	President Solar, LLC 221 W Houston Street Sherman, Texas 75090 Attention: Aaron Wilson
Phone	815-373-4966	Phone	(903) 870-9052
Fax		Fax	(903) 893-3522
E-mail	mcampbell@dps170.org	E-mail	awilson@solar-one.com
Premises Ownership	Purchaser owns and Seller leases the Premises as defined in Exhibit 2 at: 618 Division Street, Dixon, IL 61201	Additional Seller Information	A Texas limited liability company
Tax Status			
Project Name	CUSTOMER Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the "**System**") and installed on the real property comprising a portion of Purchaser's premises described or depicted in Schedule A to **Exhibit 2** (the "**Premises**"), including any buildings and other improvements on the Premises other than the System (the "**Improvements**").

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

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2</u>	System Description, Delivery Point and Premises
<u>Exhibit 3</u>	General Terms and Conditions

Purchaser:
Dixon Public Schools

DocuSigned by:

Signature:

Marc Campbell

Printed Name: Marc Campbell

Title: CSBO

Date: 12/31/2025

Seller:
President Solar, LLC

DocuSigned by:

Signature:

Aaron Wilson

Printed Name: Aaron Wilson

Title: Chief Executive Officer

Date: 12/31/2025

Exhibit 1**Pricing**

1. **Initial Term:** Seven (7) years, beginning on the Commercial Operation Date (the “Initial Term”). Contract Price:

Contract Year	\$/kWh
1	\$0.036
2	\$0.036
3	\$0.036
4	\$0.036
5	\$0.036
6	\$0.036
7	\$0.036

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

2. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:

- a. Interconnection costs for the System will be paid by Seller.
- b. All prices in this Agreement are calculated based on successfully receiving the Illinois Shines SREC approval, City of Dixon permit approval/s for the System/s, and placement of the Investment Tax Credit benefits. If any one of the Illinois Shines SREC approval, City of Dixon permit approval, or the placement of the Investment Tax Credit benefits are not successfully received, Either Party may terminate this Agreement with no penalty at Either Party’s discretion.
- c. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of **Exhibit 3**) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).

3. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:

- a. Upgrades or repair to Purchaser or utility electrical infrastructure (including: Purchaser or utility service, transformers, substations, poles, breakers, reclosers, and disconnects), except such repair as may be required by Seller’s damage to such infrastructure.

4. **Termination Payment Schedule (Exhibit 3, Section 11(b)):**

Contract Year	Termination Payment (\$)
1	\$1,093,300.00
2	\$880,153.63
3	\$761,257.25
4	\$642,360.88
5	\$523,464.50
6	\$281,098.20
7	\$233,807.21

Exhibit 2
System Description, Delivery Point and Premises

1. System Location and Size (DC/kW): 618 Division Street, Dixon, IL 61201 - 377kW
2. System Size (DC kW): 377kW DC
3. System Description (Expected Structure, Etc.): Seller shall design, construct, and maintain the roof-mounted and ground mounted solar arrays previously described herein as the system, to be situated at CUSTOMER more specifically described in Exhibit 2 Section 4 as the Premises.
4. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable): the rooftop of the following as depicted in the images below;
 - b. Proposed System location (as depicted below);
 - c. Delivery point for electricity generated by the System (the "Delivery Point");
 - d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs etc.); and

Schedule A

(to be added upon final design approval by the Parties)

Solar Power Purchase Agreement

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

Purchaser:	Dixon Public Schools	Seller:	President Solar, LLC
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Phone	815-373-4966	Phone	(903) 870-9052
Fax		Fax	(903) 893-3522
E-mail	mcampbell@dps170.org	E-mail	awilson@solar-one.com
Premises Ownership	Purchaser owns and Seller leases the Premises as defined in Exhibit 2 at: 300 Lincoln Street, Dixon, IL 61201	Additional Seller Information	A Texas limited liability company
Tax Status			
Project Name	CUSTOMER Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the "**System**") and installed on the real property comprising a portion of Purchaser's premises described or depicted in Schedule A to **Exhibit 2** (the "**Premises**"), including any buildings and other improvements on the Premises other than the System (the "**Improvements**").

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

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2</u>	System Description, Delivery Point and Premises
<u>Exhibit 3</u>	General Terms and Conditions

Purchaser:
Dixon Public Schools

DocuSigned by:
Signature: Marc Campbell
Printed Name: Marc Campbell
Title: CSBO
Date: 12/31/2025

Seller:
President Solar, LLC

DocuSigned by:
Signature: Aaron Wilson
Printed Name: Aaron Wilson
Title: Chief Executive Officer
Date: 12/31/2025

Exhibit 1

Pricing

1. **Initial Term:** Seven (7) years, beginning on the Commercial Operation Date (the “Initial Term”). Contract Price:

Contract Year	\$/kWh
1	\$0.036
2	\$0.036
3	\$0.036
4	\$0.036
5	\$0.036
6	\$0.036
7	\$0.036

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

2. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:

- a. Interconnection costs for the System will be paid by Seller.
- b. All prices in this Agreement are calculated based on successfully receiving the Illinois Shines SREC approval, City of Dixon permit approval/s for the System/s, and placement of the Investment Tax Credit benefits. If any one of the Illinois Shines SREC approval, City of Dixon permit approval, or the placement of the Investment Tax Credit benefits are not successfully received, Either Party may terminate this Agreement with no penalty at Either Party’s discretion.
- c. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of Exhibit 3) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).

3. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:

- a. Upgrades or repair to Purchaser or utility electrical infrastructure (including: Purchaser or utility service, transformers, substations, poles, breakers, reclosers, and disconnects), except such repair as may be required by Seller’s damage to such infrastructure.

4. **Termination Payment Schedule** (Exhibit 3, Section 11(b)):

Contract Year	Termination Payment (\$)
1	\$1,350,646.00
2	\$1,087,328.25
3	\$940,445.50
4	\$793,562.74
5	\$646,679.99
6	\$347,264.39
7	\$288,841.83

Exhibit 2
System Description, Delivery Point and Premises

1. System Location and Size (DC/kW): 300 Lincoln Street, Dixon, IL 61201 - 465.74kW
2. System Size (DC kW): 465.74kW DC
3. System Description (Expected Structure, Etc.): Seller shall design, construct, and maintain the roof-mounted solar arrays previously described herein as the system, to be situated at CUSTOMER more specifically described in Exhibit 2 Section 4 as the Premises.
4. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable): the rooftop of the following as depicted in the images below;
 - b. Proposed System location (as depicted below);
 - c. Delivery point for electricity generated by the **System** (the “**Delivery Point**”);
 - d. Access points needed for Seller to install and service the System (building, access, electrical room, stairs etc.); and

Schedule A

(to be added upon final design approval by the Parties)

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Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser's electricity consumption requirements at the Premises exceed the output of the System, and at Purchaser's discretion.
2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 5) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the "Term").
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for one or more Additional Term(s) of eight (8) years each at a Contract Price of \$0.036 per kWh.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 3 of Exhibit 1, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have negotiated a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages or penalties in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 3 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred 365 days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. Purchaser shall not be liable for any damages or penalties in connection with such termination.
3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 3 are Purchaser's responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice and in accordance with Illinois Government Code. Any undisputed portion of the invoice amount not paid within forty-five (45) days shall accrue interest at the maximum rate permitted by law. All payments shall be made in U.S. dollars.
 - d. **Taxes.**
 - i. **Purchaser's Taxes.** Seller is not responsible for: (1) payment of, or reimbursement of Purchaser, for all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the utility's electricity distribution system; and (2) real property taxes.

- ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property or other taxes imposed on the System or as a result of the installation of the System ("**Seller's Taxes**").

- 4. **RECs and Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the RECs (defined below) and Incentives. Purchaser shall reasonably cooperate with Seller in obtaining, securing and transferring any and all RECs and Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Purchaser, Purchaser shall promptly pay or deliver such items or amounts to Seller.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law in connection with the System, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**SREC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right 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, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development, design, and installation of the System, subject to Section 2(c), Section 11 and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "**Approval**"):
 - i. any zoning, land use and building permits required for Seller to construct, install and operate the System; and
 - ii. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within 365 days after the Effective Date. "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- d. **Force Majeure.**
 - i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the

Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, subject to Section 5(d)(ii) below.

ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability or penalty under this Agreement except liabilities accrued prior to termination. In such case, Seller shall remove the System as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (b) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay the applicable Termination Payment. If Seller elects to terminate the Agreement in accordance with this Section, Purchaser shall not be liable to pay the Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of either Party, including, without limitation, an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of the Party's control or due to a Force Majeure Event.

e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay, but subject to Section 5(d)(ii).

f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to operate from the relevant Governmental Authority. Seller shall also provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation.

6. **Installation, Operation and Maintenance.**

a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulations and local building codes. Seller shall be responsible for repair and damage, if any, caused by Seller's penetration of the roof to the Premises during the Term and Additional Term.

b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have ten (10) business days after receipt to approve or disapprove the design. Purchaser's approval does not guarantee or imply that the design, if followed, will result in a properly designed System or that any System built in accordance therewith will be built in a good and workmanlike manner. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 2(c) above.

c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and

expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.

- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(b) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair, subject to reasonable wear and tear. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 6(c) and 6(d). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive access easement (the "Non-Exclusive Easement") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "Easement Term"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. Seller and its employees, agents and contractors must comply with Purchaser's site safety and security requirements when on the Premises during the Easement Term. During the Easement Term, Purchaser shall preserve and protect Seller's rights under the Easement and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller and Purchaser may record a customary instrument in the land records respecting the Access Easement. Purchaser shall allow Seller quiet and unencumbered use of the System on the Premises during the full Easement Term of the Agreement.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act ("OSHA") requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the System that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on

the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.

- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
 - i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "Lien") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the System due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
 - ii. **Lien Indemnity.** Seller shall indemnify the Purchaser from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against Purchaser's property as a result of Seller's breach of its obligations under Section 7(f)(i).
- g. **Felony Conviction.** Seller represents and warrants that no officer or director of Seller has been convicted of a felony. Should it become known to Seller that any Seller officer or director is convicted of a felony while this Agreement is in effect, Seller will notify Purchaser of such conviction.
- h. **Criminal History.** Seller will comply with and obtain all criminal history information required by applicable law with respect to Seller's employees, agents, or contractors who will be providing services on the Premises or other location at which students may be present. Specifically, with respect to such employees, agents or contractors, Seller will (i) obtain state or national criminal history as required; (ii) certify compliance to Purchaser; (iii) upon request, provide identifying information to Purchaser; and (iv) prohibit employees, agents or contractors with disqualifying criminal history, as defined in Tex. Educ. Code §22.085, from performing services on the Premises. Seller will assume all expenses associated with obtaining criminal history record information. If Purchaser objects to the assignment of any employee, agent, or contractors on the basis of their criminal history record information, Seller agrees to immediately discontinue using that individual to provide services under this Agreement.
- i. **Safety.** The Seller shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work under this Agreement. The Seller shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (i) employees and other persons who may be affected thereby; (ii) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Seller, a subcontractor, or a sub-subcontractor; and (iii) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Seller shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Seller shall promptly remedy damage and loss to property caused in whole or in part by the Seller, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Seller is responsible.

Seller's employees, agents, and subcontractors shall not perform any service on the Premises while under the influence of alcohol or any controlled substance. Seller, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs

while performing the work. Seller, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the work. Seller will remove any of its employees from performing the work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Purchaser has the right to require Seller to remove employees from performing the work any time cause exists to suspect alcohol or drug use. Seller will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Purchaser has also banned the presence of all weapons on the project site, whether the owner thereof has a permit for a concealed weapon or not.

8. Relocation of System.

If, during the Term, Purchaser ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been materially damaged or destroyed; or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System, at Purchaser's cost, in lieu of termination of the Agreement by Seller for a Default Event by Purchaser. If such proposal is practically feasible, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement pursuant to Section 11(b)(ii).

9. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or earlier termination. The portion of the Premises where the System is located shall be returned by Seller at Seller's expense to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser shall provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost. Parties agree the System shall not be removed or cease operations for a minimum of fifteen (15) in order to comply with the Illinois Shines requirement for the System to operate for fifteen (15) years from the date it receives its Permission to Operate from the utility.

10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "Meter"). Purchaser shall have access to the metered energy output data via the monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.

11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "Defaulting Party", the other Party is the "Non-Defaulting Party" and each of the following is a "Default Event":
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("Payment Default");
 - ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such

cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;

- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
- v. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Purchaser pays the Termination Payment determined under Section 4 of Exhibit 1 within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event, including a Payment Default, the other Party may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that the Defaulting Party cures the Default Event in full, or (b) of termination of this Agreement. Seller's and Purchaser's rights under this Section 11(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing ten (10) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 4 of Exhibit 1, and (ii) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.
 - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) all direct costs reasonably incurred by Purchaser by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11(b)(iii)(2) cannot be less than zero. In case of such termination by Purchaser, Purchaser shall not be responsible for payment to Seller of any Termination Payment as set forth in Item 4 of Exhibit 1.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Purchaser pursuant to Section 11(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.

- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 11(b)(ii), nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. **Representations and Warranties.**

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Easements.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the Access Easements in Section 7(a), (b) such grant of the Access Easement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Access Easements to Seller so that Seller may perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is, to Purchaser's current knowledge accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.¹

¹ This limitation reflects the requirements to qualify for the Federal Energy Tax Credit under §48 of the Internal Revenue Code. Individual states or localities may have further restrictions on the use of electricity from the System. Purchasers and Sellers are encouraged to consult local law to ensure that no such restrictions are being violated.

c. Seller's Warranties.

- i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
- ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.
- iii. Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller is bound.

- d. NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. IF A PERFORMANCE GUARANTY IS BEING PROVIDED PURSUANT TO SECTION 4(d) OF EXHIBIT 1, THE PERFORMANCE GUARANTY WILL REPRESENT A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. Insurance, Bonds, and Prevailing Wage Rates.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall purchase and maintain the following insurance, as applicable:
 - i. **Seller's Insurance.** Seller shall maintain or ensure the following is maintained (a) property insurance on the System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and which coverage shall not exclude or restrict coverage for claims related to roofing, (c) employer's liability insurance with coverage of at least \$1,000,000, (d) workers' compensation insurance as required by law, (e) automobile liability covering vehicles owned by the Seller and non-owned vehicles used by the Seller, with policy limits or not less than \$1,000,000 per accident, and (f) Employers' Liability with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$2,000,000 policy limit.
 - ii. Seller's coverage may be provided as part of an enterprise insurance program.
 - iii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b. **Policy Provisions.** Seller's insurance policies shall (i) contain a provision whereby the insurer agrees to give Purchaser at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to Purchaser, (iv) shall be from an insurance company lawfully authorized to issue insurance in the jurisdiction where the Premises are located, and (v) shall not limit or waive Seller's legal or contractual responsibilities to Purchaser or others.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

e. **Workers' Compensation Insurance Coverage**

.1 **Definitions:**

.1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Seller's work on the Project has been completed and accepted by the Purchaser.

.1.3 **Persons providing services on the Project ("subcontractor").** Includes all persons or entities performing all or part of the services the Seller has undertaken to perform on the Project, regardless of whether that person contracts directly with the Seller and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Seller shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Illinois Labor Code for all employees of the Seller providing services on the Project, for the duration of the Project.

.3 The Seller must provide a certificate of coverage to the Purchaser prior to being awarded the contract.

.4 If the coverage period shown on the Seller's current certificate of coverage ends during the duration of the Project, the Seller must, prior to the end of the coverage period, file a new certificate of coverage with the Purchaser showing that coverage has been extended.

.5 The Seller shall obtain from each person providing Services on a Project, and provide to the Purchaser:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Purchaser will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Seller, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Seller shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Seller shall notify the Purchaser in writing by certified mail or personal delivery, within ten (10) days after the Seller knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Seller shall post on each Project site a notice, in the text, form and manner prescribed by the Illinois Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.9 The Seller shall contractually require each person with whom it contracts to provide services on a Project, to:

- .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Illinois Labor Code for all of its employees providing services on the Project, for the duration of the Project;
- .9.2 provide to the Seller, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .9.3 provide the Seller, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.4 obtain from each other person with whom it contracts, and provide to the Seller:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- .9.6 notify the Purchaser in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Seller is representing to the Purchaser that all employees of the Seller who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Illinois Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Seller to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Seller's failure to comply with any of these provisions is a breach of contract by the Seller which entitles the Purchaser to declare the contract void if the Seller does not remedy the breach within ten (10) days after receipt of notice of breach from the Purchaser.

f. **Payment Bonds:** the Seller represents and warrants that there will be no potential payment bond beneficiaries or subcontractors on this project such that any payment bond would be required. If this is not the case, Seller is required, before beginning work on the Premises, to execute a payment bond as specified below. The bond shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Seller or a subcontractor to supply public work labor or material.

g. **Prevailing Wage Rates:** The project may be subject to the requirements of state and local Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Seller, and any subcontractor under the Seller, to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

In accordance therewith, the Purchaser has established a scale of prevailing wages which is incorporated herein by reference, and not less than this established scale must be paid on the project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

14. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System, and all RECs and Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Purchaser Lienholders.** Purchaser shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
- iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Purchaser), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice.** To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. **Option to Purchase.**

- i. **Exercise of Option.** At the end of the sixth (6th) Contract Year and at the end of the Initial Term and each Additional Term, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System applicable as of the date of the transfer of title to the System. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. If Purchaser exercises its Option to Purchase the System at the end of the Initial Term, Seller shall permit Purchaser the option of paying the Fair Market Value over the course of ten (10) years.
- ii. **Fair Market Value.** The "Fair Market Value" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of the System by Purchaser, Seller shall no longer have responsibility for the operation and maintenance of the System or liability for the performance of (and risk of

loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), Seller will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **GENERAL.** TO THE EXTENT ALLOWED BY THE LAWS AND CONSTITUTION OF THE STATE OF ILLINOIS, EACH PARTY (THE "INDEMNIFYING PARTY") SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, ITS AFFILIATES AND THE OTHER PARTY'S AND ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY LOSS, DAMAGE, EXPENSE, LIABILITY AND OTHER CLAIMS, INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES (COLLECTIVELY, "LIABILITIES") RESULTING FROM (1) ANY CLAIM (AS DEFINED IN SECTION 15(B) RELATING TO THE INDEMNIFYING PARTY'S BREACH OF ANY REPRESENTATION OR WARRANTY SET FORTH IN SECTION 12 AND (2) INJURY TO OR DEATH OF PERSONS, AND DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY OR ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF, OR THE WILLFUL MISCONDUCT OF, THE INDEMNIFYING PARTY (OR ITS CONTRACTORS, AGENTS OR EMPLOYEES) IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT NOTHING HEREIN WILL REQUIRE THE INDEMNIFYING PARTY TO INDEMNIFY THE INDEMNIFIED PARTIES FOR ANY LIABILITIES TO THE EXTENT CAUSED BY OR ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF, OR THE WILLFUL MISCONDUCT OF, AN INDEMNIFIED PARTY. THIS SECTION 15(A) DOES NOT APPLY TO LIABILITIES ARISING OUT OF OR RELATING TO ANY FORM OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONTAMINATION, SUCH MATTERS BEING ADDRESSED EXCLUSIVELY BY SECTION 15(C).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
 - i. **SELLER INDEMNITY.** SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ALL OF PURCHASER'S INDEMNIFIED PARTIES FROM AND AGAINST ALL LIABILITIES ARISING OUT OF OR RELATING TO THE EXISTENCE AT, ON, ABOVE, BELOW OR NEAR THE PREMISES OF ANY HAZARDOUS SUBSTANCE (AS DEFINED IN SECTION 15(C)(IV)) TO THE EXTENT DEPOSITED, SPILLED OR OTHERWISE CAUSED BY SELLER OR ANY OF ITS CONTRACTORS, AGENTS OR EMPLOYEES.
 - ii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 16, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(d)(i)
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the greater of the limits of the insurance coverage provided in Section 13(a) of this Agreement, or the total payments made (and, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 15(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

16. Change in Law.

- a. **Impacts of Change in Law.** If Seller or Purchaser determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's or Purchaser's rights, entitlement, obligations or costs under this Agreement, then Seller or Purchaser may so notify the other Party in writing of such Change in Law. Within thirty (30) days following receipt of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller or Purchaser may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability or penalty under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, Seller's performance of this Agreement, or Purchaser's performance of this Agreement, either illegal or impossible, then Seller or Purchaser may terminate this Agreement immediately upon notice to the other Party without either Party having further liability or penalty under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

17. Assignment and Financing.

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i):
 - 1. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument on terms satisfactory to Purchaser, including as to the assignee's creditworthiness; and

2. Purchaser may, by providing prior notice to Seller, assign this Agreement:

- a. to an affiliate of Purchaser or a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness; and
- b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the material terms of this Agreement.

c. Termination Requires Consent. Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

18. Confidentiality.

a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

b. Permitted Disclosures. Notwithstanding Section 18(a):

- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority, or is required to be disclosed by a Governmental Authority, under applicable law or pursuant to a validly issued subpoena or letter ruling, (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. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

c. Miscellaneous. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the

receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the roofs of the Premises reflecting its association with the System.

19. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** In the event of any dispute arising under this Agreement (a "Dispute"), within ten (10) business Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (x) shall independently prepare a written summary of the Dispute describing the issues and claims, (y) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (z) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, any dispute arising from or relating to this Agreement shall be resolved in the Court of Grayson County, Texas. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Illinois, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability or penalty under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. **Prohibition on Companies Boycotting Israel.** Seller does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- o. **Immunity:** By entering into this Agreement the Purchaser does not waive any immunities from suit or liability provided to the Purchaser under law.

End of Exhibit 3

