

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 a Party (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	Pleasantdale School District 107 7450 S. Wolf Rd. Burr Ridge, IL 60527 Attention: Griffin Sonntag	Name and Address	IGS Solar, LLC 6100 Emerald Parkway Dublin, OH 43016 Attention: David Lim
Phone	Office: (708) 784-2172	Phone	
E-mail	gsonntag@d107.org	E-mail	legal@igs.com
Premises Ownership	Purchaser <input checked="" type="checkbox"/> owns <input type="checkbox"/> leases the Premises. List Premises Owner, if different from Purchaser:	Additional Seller Information	

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

The Exhibits listed below are incorporated by reference and made part of this Agreement. Signature below constitutes agreement to the provisions of each Exhibit.

- Exhibit 1** Pricing Summary
- Exhibit 2** System Description, Delivery Point and Premises
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Termination Payment Amounts
- Exhibit 5** Form of Site Lease

Purchaser: Pleasantdale School District 107

Seller: IGS Solar, LLC

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Pricing Summary

1. **Initial Term:** 25 years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two Additional Terms of five years each.
3. **Environmental Incentives and Environmental Attributes:** Accrue to Seller.
4. **PPA Rate:**

Contract Year	PPA Rate (\$/kWh)
1	\$0.0950
2	\$0.0950
3	\$0.0950
4	\$0.0950
5	\$0.0950
6	\$0.0950
7	\$0.0950
8	\$0.0950
9	\$0.0950
10	\$0.0950
11	\$0.0950
12	\$0.0950
13	\$0.0950
14	\$0.0950
15	\$0.0950
16	\$0.0950
17	\$0.0950
18	\$0.0950
19	\$0.0950
20	\$0.0950
21	\$0.0950
22	\$0.0950
23	\$0.0950
24	\$0.0950
25	\$0.0950

5. **Condition Satisfaction Date:** 180 days after the Effective Date.
6. **Rebate Variance.** All prices in this Agreement are calculated based on an upfront IL Smart Inverter Rebate of \$74,125.00. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.
7. **Purchaser Options to Purchase System.** None or as set forth in Section 16(b).

Exhibit 2

System Description, Delivery Point and Premises

1. **Street Address of Premises and Facility:** 7450 S. Wolf Rd., Burr Ridge, IL 60527
2. **System Size (DC kW):** 296.5
3. **Expected First Year Energy Production (kWh):** 336,528 kWh
4. **Expected Structure:** Ground Mount Roof Mount Parking Structure Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
ZN Shine Solar 550W Modules	539

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Solar Edge 100kW Inverters	2

7. **Facility and System Layout:** See **Exhibit 2, Attachment A**
8. **Utility:** Commonwealth Electric (ComEd)
9. **System Installation:** Performed by IGS Solar or its Subcontractors. System design, engineering, permitting, installation, utility interconnection, monitoring and rebate application paperwork (if applicable). Any like substantive equipment may be utilized in lieu of the modules and inverters above, in the sole discretion of Seller. Installation does not include: unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to the Facility or utility electrical infrastructure, payment bonds, performance bond(s), tree removal or tree trimming, or resolution of storm water drainage issues or water management issues.

Exhibit 2 Attachment A*:
Facility and System Layout

*An updated Attachment A will be provided after installation.

Conceptual Drawing of the System	See below
Delivery Point	Delivery of Energy will take place at Meter #230203796 located on the South side of the school where the flat roof meets the sloped roof. (shown below in circled area)
Access Points	Installation crew will need access to the sloped rooftops and surrounding ground for equipment and product transfer as well as the external meter and internal electrical room hookups where interconnection will take place. Will also need access to laydown area, exact location yet to be determined.

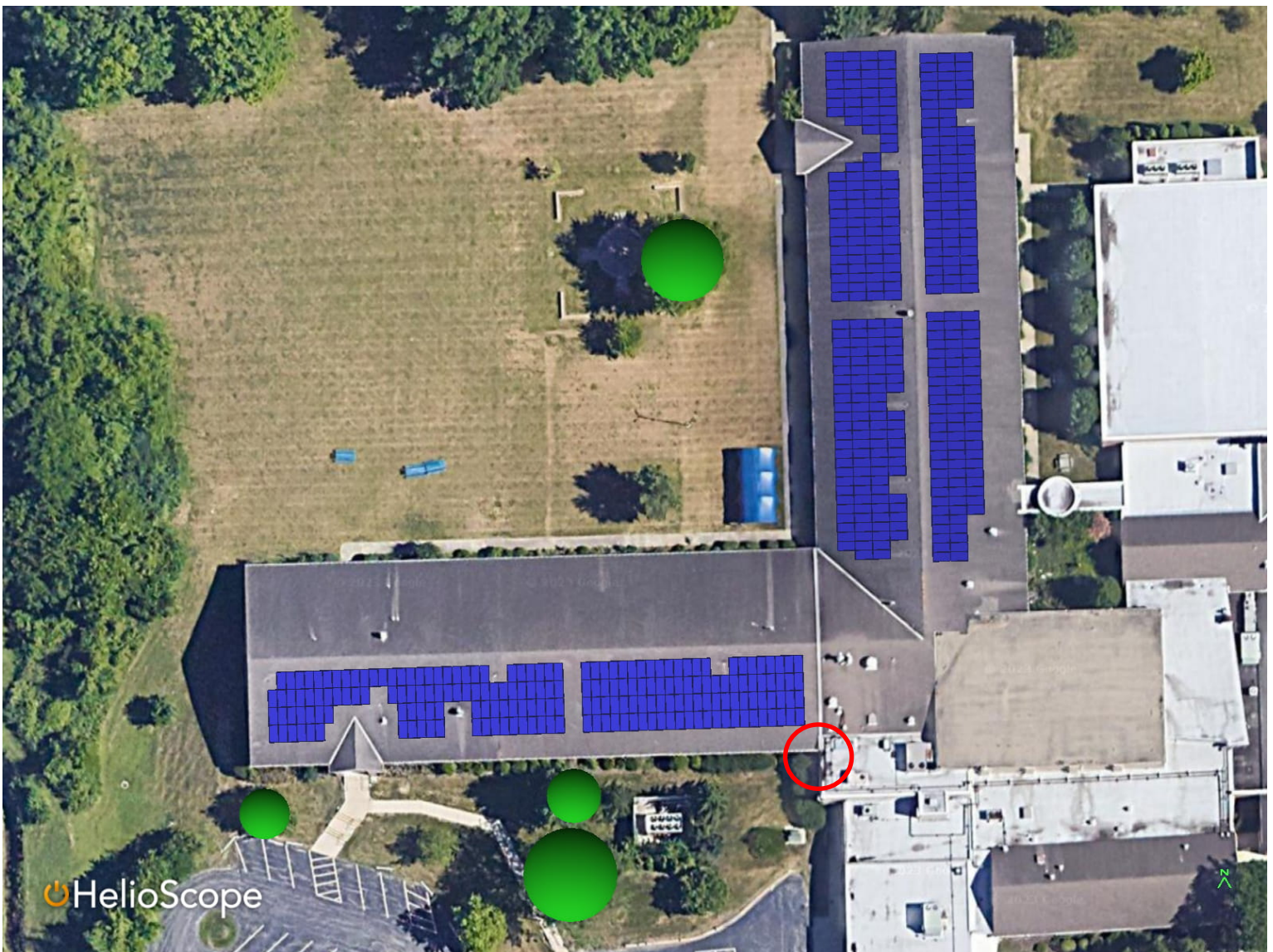


Exhibit 3

Solar Power Purchase Agreement General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document, instrument or Law (as defined below) mean such agreement, document, instrument or Law as amended, modified, supplemented, succeeded or replaced from time to time; (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation”; and (e) reference to a given Article, Section, Subsection, clause, Exhibit, annex, attachment or Schedule is a reference to an Article, Section, Subsection, clause, Exhibit, annex, attachment or Schedule of this Agreement, unless otherwise specified. Reference to a person or entity includes its predecessors, successors and permitted assigns; provided, however, that nothing contained in this sentence is intended to authorize any assignment or transfer not otherwise permitted by this Agreement. References to “days” means calendar days unless the term “business days” is used. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. The rule of construction that ambiguities in an agreement are to be construed against the drafter will not be invoked or applied in any dispute regarding the meaning of any provision in this Agreement. The Parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties set forth in this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined below and in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Any electric energy generated by the System prior to the Commercial Operation Date (as defined below) constitutes test energy only and does not indicate that the System has been put in commercial operation. .
3. **Term and Termination.**
 - a. **Effective Date; Initial Term.** This Agreement is effective commencing on the Effective Date and shall continue until the end of the Initial Term or, if applicable, any Additional Term, unless terminated earlier in accordance with the provisions of this Agreement. Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement. The initial term for purchase and sale of the electric energy under this Agreement (“**Initial Term**”) shall commence on the Commercial Operation Date and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date designated as such by Seller in a written notice to Purchaser upon the System attaining mechanical completion and being capable of transmitting electric energy to the Delivery Point.
 - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, if Purchaser has not exercised its option to purchase the System in accordance with **Section 16**, either Party may give the other Party written notice of its desire to extend the term of this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall, in its sole discretion, respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Parties must execute a written agreement to enter into the Additional Term. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall automatically terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the applicable \$/kWh rate shown in **Exhibit 1** (the “**PPA Rate**”). The monthly payment for such energy will be equal to the PPA Rate multiplied by the amount of kWh of energy generated during the applicable month, as measured by the System meter installed by Seller.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall include (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the applicable PPA Rate and (iii) the total amount due from Purchaser. The PPA Rate reflects ACH invoicing. If manual invoicing is required, a twenty five dollar (\$25) handling charge will be added to each invoice and payable to Seller.
- c. **Taxes.** Purchaser shall be responsible for any and all Taxes assessed in connection with the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the electric distribution system of the utility to which the System is interconnected (“Utility”), including any property taxes on the System; to the extent Seller is billed for any such Taxes, Purchaser shall pay such Taxes when due or reimburse Seller for the payment of such Taxes. For purposes of this Section 4(c), “Taxes” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of energy under this Agreement, which shall be Seller’s responsibility.
- d. **Payment Terms.** All amounts due and payable to Seller under this Section 4 shall be due and payable in accordance with the Illinois Local Government Prompt Payment Act after receipt of invoice, and any amount not paid within such period shall accrue interest in accordance with said Act.

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits, all of which shall be retained by Seller. Purchaser shall cooperate as may be requested by Seller for the purpose of Seller obtaining or transferring Environmental Attributes and Environmental Incentives or obtaining the benefit of all Tax Credits. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides, carbon monoxide and any other pollutants; (ii) any avoided emissions of carbon dioxide, methane or any other gas that contributes to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions, including Green Tag Reporting Rights. Environmental Attributes do not include Environmental Incentives or Tax Credits.

“**Environmental Incentives**” means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau, commission, or entity, or any arbitrator with authority to bind a party at Law.

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits and (c) other tax credits, tax benefits, tax incentives or tax-related grants available under any Law, relating to the construction, ownership or production of energy from the System.

6. **Conditions to Seller’s Obligations.**

Seller’s obligations under Section 2, Section 7 and otherwise to construct the System and sell energy from the System to Purchaser are conditioned on the fulfillment of the following conditions to the satisfaction of Seller:

- a. Completion by Seller of a physical inspection of the Facility and the property upon which the Facility is located (the “Premises”) including review of structural engineering, suitability of electrical systems and infrastructure, geotechnical reviews, real estate matters and any other diligence to confirm to Seller’s satisfaction the suitability of the Facility and the Premises for the engineering, construction, operation and maintenance of the System;
- b. Seller has obtained financing for the System on terms and conditions deemed satisfactory by Seller in its sole

discretion, and Seller's Financing Parties have approved of (A) this Agreement and (B) the Construction Agreement (if any) for the System. "**Construction Agreement**" as used in this subsection means an agreement between Seller and any of Seller's contractors or subcontractors (collectively, "**Subcontractors**") to install the System;

- c. Determination by Seller that it has received or will be able obtain all applicable Environmental Incentives, Environmental Attributes and Tax Credits;
- d. Receipt of all Permits in connection with the engineering, construction and operation of the System;
- e. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system and such agreements are in full force and effect;
- f. Provision by Purchaser of: (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, (B) written confirmation satisfactory to Seller in its sole discretion from any holder of a mortgage, lien, pledge, charge, security interest or other encumbrance (collectively, "**Lien**") over the Premises or the Facility, as applicable, that such holder will recognize and respect Seller's rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the Site Lease and any other agreements providing real property rights deemed necessary by Seller for performance of Seller's obligations under this Agreement; and provided further, such agreements shall be in full force and effect;
- g. Confirmation by Seller that there has been no adverse change in Purchaser's creditworthiness under Seller's credit criteria; and
- h. There has been no material breach of either the (i) the representations and warranties of Purchaser under this Agreement (including any material inaccuracy in any information or documents furnished by Purchaser in connection with this Agreement or the System), or (ii) any agreement or covenant of Purchaser under this Agreement.

If any of the conditions above are not satisfied by the Condition Satisfaction Date, then Seller may terminate this Agreement upon ten (10) days written notice to Purchaser without any liability or further obligation on the part of Seller. Additionally, if Purchaser fails to satisfy any of the conditions required of it above, Purchaser shall pay to Seller all of Seller's documented costs and expenses incurred through the date of termination, including Seller's costs and expenses associated with development, design, engineering, construction and interconnection of the System, all real estate and other diligence conducted by Seller, procurement of equipment and any Permits, agreements or other documentation obtained or applied for by Seller.

7. **Seller Covenants.**

- a. **Permits and Approvals.** Seller, with Purchaser's cooperation, shall use commercially reasonable efforts to obtain, at Seller's sole cost and expense:
 - i. any Permits required to construct, install and operate the System; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

Purchaser shall cooperate with Seller's requests to assist Seller in obtaining such agreements and Permits.

- b. **Construction, Operation, Maintenance and Repair.** Subject to the terms and conditions of this Agreement, including Section 6 and Section 7.c., Seller or its Subcontractors shall: (i) construct and install the System at the Facility; and (ii) during the Term, operate, maintain and repair the System at Seller's sole cost and expense. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs. Seller shall make reasonable repairs, at its cost, for any damage to Purchaser's Facility directly caused by Seller's negligent installation or operation of the System.
- c. **Non-Standard System Repair and Maintenance.** Seller shall not be responsible for any cost, expense, loss or damage related to (i) any maintenance or repairs, or attempted maintenance or repairs, performed on the System by anyone other than Seller or Seller's Subcontractors, or (ii) any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of any provision of this Agreement. In addition to any of Seller's other rights or remedies in such circumstances, Purchaser shall fully reimburse Seller for the costs and expenses of all measures Seller elects

to incur to return the System to normal operation.

- d. **Breakdown Notice.** Seller shall notify Purchaser as promptly as practicable in the event Seller becomes aware of (i) malfunction in the operation of the System or (ii) interruption in the supply of electrical energy from the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend generation of electricity by the System for the purposes of (i) maintaining and repairing the System, (ii) taking precaution in the event of an emergency, or (iii) at the request of the Utility or a Governmental Authority, and such suspension of service shall not constitute a breach of this Agreement or cause Seller to incur any liability to Purchaser; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Subcontractors.** Seller may use its Subcontractors to perform its obligations under this Agreement, provided however, that the Subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its Subcontractors.
- g. **Payment of Subcontractors and Suppliers.** Seller shall pay when due all valid charges from all Subcontractors and suppliers supplying goods or services to Seller under this Agreement. Seller will not permit its subcontractors or material and equipment suppliers to place liens on the Purchaser's property, and should such a lien be asserted or filed, Seller will take all necessary actions at its sole cost to satisfy, remove, or otherwise discharge the lien or provide a bond in lieu of discharge.
- h. **Warranty Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES BY SELLER IN SECTION 14, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AND ALL SUCH REPRESENTATIONS OR WARRANTIES, 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, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser Covenants.**

- a. **License to the Premises; Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, Subcontractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Seller's activities in using the License shall not unreasonably interfere with Purchaser's operations. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. If Purchaser is the owner of the Premises, Purchaser will, at request of Seller, execute a Site Lease in form and substance the same as set forth in **Exhibit 5** (the "**Site Lease**"), and a Memorandum of Lease in a form provided by Seller. Seller may, at its sole cost and expense, record such Memorandum of Lease with the appropriate land registry or recorder's office. If Purchaser is not the owner of the Premises, Purchaser will cooperate with Seller's reasonable requests to assist Seller in obtaining a Site Lease with the owner of the Premises. Seller's rights under the License and Seller's rights under the Site Lease shall not be construed to limit each other.
- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety Laws are adhered to in their performance under this Agreement. "**Laws**" in this Agreement means all applicable laws, rules, regulations, codes, statutes, directives, notices, requirements, Permits, ordinances, guidelines, judgments, decisions, consent decrees, injunctions, or rulings of any Governmental Authority.

- c. **Maintenance of Facility.** Purchaser shall at all times, at its sole cost and expense, maintain the Facility in good condition and repair and in a manner sufficient to support the System and the System's connection to Purchaser's electrical systems. Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall immediately notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Seller's prior written consent.
- e. **Outages.** Purchaser shall be permitted to be off line at Purchaser's request for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of
(i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be reasonably calculated by Seller.
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on, affecting or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such Lien, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such Lien or that otherwise arose as a result of such Lien.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.
- i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller immediately following the discovery by it of (i) any material malfunction in the operation of the System; (ii) any occurrences that could reasonably be expected to adversely affect the System; (iii) an interruption in the supply of electrical energy from the System; or (iv) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law.**

- a. **“Change in Law”** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Law; (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 issuance to comply with future Laws); or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority. **“Permits”** means all permits, licenses, approvals, waivers, consents, variances, grant, exemption, registration, operating certificate, order, or other authorization of a Governmental Authority.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller’s performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a significant adverse effect on Seller’s rights, entitlement, obligations, economic benefits, or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser 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 may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

10. Relocation of System.

If Purchaser ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to propose to Seller a substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation, in each case acceptable to Seller in Seller’s sole discretion. Purchaser shall provide written notice of the proposal to Seller at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it proposes to make this substitution. Purchaser will further have the right, at year seven (7) and each year thereafter to purchase the System in accordance with the terms set forth in Section 16. Purchaser’s inability to provide a substitute facility for relocation of the System on terms acceptable to Seller will be treated as a Default Event by Purchaser pursuant to Section 13.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred twenty (120) days after the expiration of the Term. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller’s cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal. The obligations of this Section 11 do not apply if, and to the extent that, the term of the Site Lease extends beyond the Initial Term or any Additional Term of this Agreement.

12. Measurement.

Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with industry standards.

13. 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 shall be deemed to be the **“Defaulting Party”**, the other Party shall be deemed to be the **“Non-Defaulting Party”**, and each event of default shall be a **“Default Event”**:
 - i. failure of a Party to pay any amount due and payable under this Agreement 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 other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Purchaser loses its rights to occupy and enjoy the Premises or the Facility;
- v. 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, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- vi. Purchaser (a) prevents Seller from installing the System or (b) otherwise fails to perform in a way that prevents the generation of electric energy by the System or delivery of electric energy to the Delivery Point. Such Default Event shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing in this Section 13 shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this Agreement without cause prior to commencement of System installation a five thousand dollar (\$5,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
 - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to for any given Contract Year, the amount set forth on Exhibit 4 attached hereto. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. If the Default Event by Purchaser occurs prior to the Commercial Operation Date, Seller may terminate this Agreement upon written notice to Purchaser and Purchaser shall pay to Seller all of Seller’s costs and expenses incurred through the date of termination, including Seller’s costs and expenses associated with development, design, engineering, construction and interconnection of the System, all real estate and other diligence conducted by Seller, procurement of equipment and any Permits,

agreements or other documentation obtained or applied for by Seller.

- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, Seller shall, at Seller's sole cost and expense, remove the System within one hundred eighty (180) days of the termination date.

14. Representations, Warranties and Covenants.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date and the Condition Satisfaction Date:

- 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 shall not violate any Law; and this Agreement is a valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. 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 material compliance with all Laws, including all environmental laws, that relate to this Agreement.

- b. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

- i. License and Site Lease. Purchaser has valid title to or a valid leasehold or other property interest in the Premises and the Facility. Purchaser has the full right, power and authority to grant the License contained in Section 8(a) and the Site Lease. Such grant of the License and entry into the Site Lease do not violate any Law applicable to Purchaser or the Facility 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 Facility or the Premises. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement and the Site Lease.
- 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 or the Facility is bound.
- iii. Accuracy of Information. All information and documents provided by Purchaser to Seller, including as they pertain to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, are true, accurate and complete 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. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises or the Facility to the actual knowledge of the Purchaser's then-current administrators, after reasonable inquiry and review of readily available records.
- vi. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
- vii. Oregon Only: The electricity generated by the System will be used solely for commercial and business purposes. No portion of the electricity generated will be used for personal, family, household or agricultural purposes.

15. System and Facility Damage and Insurance.

a. **System and Facility Damage.**

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

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

- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the full replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (D) workers' compensation insurance as required by law.
- ii. **Purchaser's Insurance.** Purchaser shall maintain (a) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate and (b) property insurance on the Facility for the full replacement cost thereof.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate, or failure to request such certificate, shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term (except in the circumstances provided in Section 16.b or Section 19), Seller shall be the legal and beneficial owner of the System (including all components thereof) at all times, including all Environmental Attributes (unless otherwise specified on Exhibit 1), and the System and all components thereof shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will place all parties having an interest in or Lien on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or

release from such lienholder. 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 Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any holder of a Lien on the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

- b. **Option to Purchase.** On the first day of Contract Year seven and the first day of each year thereafter, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least three hundred sixty-five (365) days prior to the first day of the applicable Contract Year. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon the closing of the purchase and sale of the System and payment of the purchase price, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, Seller shall have no further liabilities or obligations hereunder, and this Agreement shall terminate.
- c. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to purchase the System. Seller shall give written notice to Purchaser of such determination, along with an explanation of the calculation of Fair Market Value. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, 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 based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the 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 shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to Liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has

obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no Liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises or Facility of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its Subcontractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises or Facility of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its Subcontractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or Facility or the Premises or Facility generally or any deposit, spill or release of any Hazardous Substance.

i. **"Hazardous Substance"** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any 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 FOR THIRD PARTY CLAIMS PURSUANT TO THIS SECTION 17 AND DAMAGES THAT RESULT FROM THE WILLFUL MISCONDUCT OF A PARTY, NEITHER PARTY NOR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING OUT OF THEIR PERFORMANCE OR NONPERFORMANCE HEREUNDER EVEN IF ADVISED OF SUCH. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages. No Termination Payment shall be deemed to be indirect, special, incidental, exemplary or consequential damages for purposes of this Section 17(d)(i).

ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 17 and damages that result from the willful misconduct of Seller, Seller's aggregate Liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement in the three (3) years prior to a claim. The foregoing limitation shall not apply to damages to the Purchaser's Facility directly caused by the negligence of Seller, provided, however, that Seller's aggregate Liability under this Agreement with respect to such damages shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such Liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. **Force Majeure.**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, and includes failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; epidemic or pandemic or public health emergency; 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; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and

diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred and eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by Purchaser, including by operation of law, without the prior written consent of Seller and any such assignment or attempted assignment without Seller's prior written consent shall be void. This Agreement shall be binding on and inure to the benefit of the Parties' successors and permitted assignees. Seller may assign, pledge as collateral, sell or transfer this Agreement or the System or any of Seller's rights or obligations under this Agreement or rights in and to the System (a) to any affiliate of Seller or (b) to any Financing Party or as part of any transaction Seller or any affiliate of Seller may enter into with any Financing Party; Purchaser hereby consents to any such assignment, pledge, sale or transfer.
- b. **Financing.** The Parties acknowledge that Seller or an affiliate of Seller may obtain financing (including, without limitation, any form of debt, equity or lease financing or capital) or credit support from one or more Financing Parties in relation to the development, construction, ownership, transfer, operation or maintenance of the System. "**Financing Party**" or "**Financing Parties**" means any Person who provides to Seller or Seller's affiliate any type of financing, capital or credit support for or in connection with development, construction, ownership, transfer, operation or maintenance of the System, whether directly or indirectly, and including, but not limited to, any Person to whom Seller or Seller's affiliate has transferred any ownership interest, direct or indirect, in the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be requested by the Financing Parties. Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance requested by such Financing Parties. "**Person**" means any person or legal entity.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any financing or credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. Miscellaneous Provisions.

- a. **Choice of Law; Jurisdiction.** This Agreement will in all respects be governed by Illinois law, regardless of any principles of conflicts of laws. Any suit, action, claim or proceeding brought in connection with this Agreement shall be brought exclusively in a court of the State of Illinois or federal court sitting in Cook County, Illinois and the Parties expressly consent to the jurisdiction of such courts over any such suit, action, claim or proceeding. Both Parties irrevocably waive all of their rights to a trial by jury with respect to such lawsuits.

- b. **Publicity Materials.** Seller may disclose the existence of this Agreement and use information pertaining to the installation, construction, and operation of the System in its marketing and/or publicity materials, without first obtaining written consent from Purchaser. Prior to making any public announcement regarding this Agreement, the Parties will coordinate with one another to promptly review, comment upon, and approve press releases or public announcements.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include Section 1 (Definitions and Interpretation); Section 3 (Term and Termination); Section 11 (Removal of System at Expiration); Section 13 (Default, Remedies and Damages); Section 17 (Indemnification and Limits of Liability); and Section 20 (Miscellaneous Provisions).
- e. **Further Assurances.** In addition to its other obligations under this Agreement, each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waiver.** Neither Party shall be deemed to have waived, deferred or reduced any right or requirement unless such action is in writing and signed by the waiving Party. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of a requirement under this Agreement shall be limited to the specific requirement waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of any other requirement.
- g. **Comparative Negligence.** Unless otherwise provided in this Agreement, it is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further Liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **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 will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

- k. **No Partnership.** The relationship of the Parties is that of independent contractors. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary, employment, agency or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, attachments, annexes or schedules hereto, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be amended or modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement.
- m. **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.
- n. **No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Payment Bonds.** Any payment bond issued will cease at the termination of any time required by law. Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.

Exhibit 4

Termination Payment
Amounts

Contract Year	Termination Payment Amount
1	\$1,419,403
2	\$884,531
3	\$737,038
4	\$611,756
5	\$499,534
6	\$385,532
7	\$357,770
8	\$340,340
9	\$322,142
10	\$303,135
11	\$285,455
12	\$266,996
13	\$247,717
14	\$227,573
15	\$206,519
16	\$184,505
17	\$161,480
18	\$137,389
19	\$128,101
20	\$118,813
21	\$114,221
22	\$109,628
23	\$105,036
24	\$100,443
25	\$95,850
After Year 25	Fair Market Value but not more than YR 25 buyout unless otherwise agreed to in writing by the parties

End of Exhibit 4

Exhibit 5

Form of Site Lease