



County of Fairfax, Virginia

AMENDMENT

October 2, 2020

Sun Tribe Solar, LLC
455 2nd Street SE, Suite 400
Charlottesville, VA 22902

AMENDMENT NO. 1

CONTRACT TITLE: Solar Power Purchase Agreement Services

CONTRACT NO. 4400009516

By mutual agreement, the above contract is hereby amended (i) to delete in its entirety the form of Power Purchase Agreement attached to the Request for Proposal 2000002845, as amended, and to replace it with the Power Purchase Agreement attached hereto as Exhibit A, and (ii) to provide clear guidance that the Power Purchase Agreement, if and when mutually executed, shall take precedence in the event of a conflict. The documents which comprise the entirety of the contract are identified below.

The contract award shall be in accordance with and any inconsistency or conflict among the documents shall be resolved by giving priority in the order they are listed below:

- 1) Power Purchase Agreement (including all schedules thereto, including without limitation, the Lease Agreement) (as amended, modified or supplemented from time to time, the "PPA"), if and when the PPA is mutually executed;
- 2) Acceptance Agreement (as amended);
- 3) The terms and conditions of Request for Proposal 2000002845 ("RFP") as revised by Addendum 4; The RFP is incorporated by reference for the sole purpose to construe but not to vary the terms of the PPA.
- 4) Your proposal submitted on September 6, 2019;
- 5) Your Best and Final Offer from November 14; and
- 6) The signed Memorandum of Negotiations

Further, this amendment clarifies that upon mutual execution of a PPA for a particular project, such mutual execution constitutes your notice to proceed for the Development Tasks (as such term is defined in the PPA) relative to such project. For the avoidance of doubt, execution of a PPA does not constitute, and shall not be construed as, the Installation Notice to Proceed (as such term is defined in the PPA).

Department of Procurement and Material Management

12000 Government Center Parkway, Suite 427
Fairfax, VA 22035

Website: www.fairfaxcounty.gov/dpmm

Phone: 703-324-3201, TTY: 711, Fax: 703-324-3228

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Except as expressly amended hereby, all prices, terms, provisions, conditions, covenants, representations and warranties contained in the contract are not modified by this amendment and continue in full force and effect as originally written.

This amendment may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This amendment is effective on the last date signed below.

The undersigned, on behalf of Sun Tribe Solar, LLC, represents and warrants that he or she is duly authorized to execute and deliver this Amendment No. 1, and such authorization is in full force and effect.

ACCEPTANCE:


Sun Tribe Solar, LLC

BY: 
(Signature)

Chief Technical Officer
(Title)

Taylor Brown
(Printed)

October 1, 2020
(Date)

DocuSigned by:

0EEA0FDCE6634D3...
Cathy A. Muse, CPPO
Director/County Purchasing Agent

10/01/2020
(Date)

DISTRIBUTION

Finance – Accounts Payable/e
OEEC – Susan Hafeli/e
FCPA – Keith Snyder/e
Contractor - Taylor.brown@suntribesolar.com

DPMM – Contract Specialist – Patricia Wilkerson
DPMM – Supplier Diversity – Chris McGough/e
FCPS – John Lord/e (jlord@fcps.edu)

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EXHIBIT A

Form of Power Purchase Agreement

[Attached]

**FORM OF
SOLAR POWER PURCHASE AGREEMENT
[PROJECT SITE]**

BY AND BETWEEN

**[FAIRFAX ENTITY]
 (“PURCHASER”)**

AND

**SUN TRIBE SOLAR, LLC
 (“SELLER”)**

DATED: _____

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**FORM OF
SOLAR POWER PURCHASE AGREEMENT
[PROJECT SITE]**

THIS SOLAR POWER PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of [•] (the “Contract Date”), by and between [FAIRFAX ENTITY] (“Purchaser”), and SUN TRIBE SOLAR, LLC, a Virginia limited liability company (“Seller”). Purchaser and Seller may each be referred to herein as the “Party”, or collectively as the “Parties”, as the usage of such term may require.

RECITALS

WHEREAS, on June 6, 2019, Fairfax County, Virginia (the “County”) issued a Request for Proposal entitled “Solar Power Purchase Agreement Services” (RFP No. 2000002845), as subsequently amended (the “RFP”), to establish one or more contract(s) through competitive negotiation for solar power purchase agreement services;

WHEREAS, Seller, together with other RFP offerors, submitted its technical and cost proposal in response to the RFP;

WHEREAS, Purchaser’s Selection Advisory Committee reviewed and evaluated all proposals submitted in response to the RFP and made a recommendation of such offerors deemed fully qualified and best suited among those submitting proposals, on the basis of the factors outlined in the RFP;

WHEREAS, following negotiations, the Purchasing Agent selected Seller in reliance on (a) Seller’s submissions and representations in its proposal to the County, all as agreed upon in the Acceptance Agreement (Contract No. 4400009516) with an award date of December 6, 2019, as amended, and the Memorandum of Negotiations between the County and Seller (collectively, the foregoing documents and the solar RFP, the “RFP”), and (b) this negotiated and finalized Agreement;

WHEREAS, Purchaser desires to engage Seller to furnish all labor, supervision, equipment, tools, parts, and materials, as necessary, to design, install, own, operate, and finance the grid connected solar photovoltaic system, as more particularly described on Schedule 2 (System Description) attached hereto (the “System”), and installed on the real property comprising Purchaser’s owned or leased premises described or depicted in Schedule 3 (Project Site) (the “Project Site”), including any buildings, parking surface, and/or other improvements on the Project Site other than the System (the “Improvements”);

WHEREAS, Seller desires to provide to Purchaser, and Purchaser desires to receive and utilize, solar-powered electricity to be generated by the System at the Project Site in compliance with all Applicable Laws, including the pilot program for third party power purchase agreements pursuant to Chapter 358 and 382 of the 2013 Virginia Acts of Assembly, as amended by Chapter 803 of the Acts of Assembly of 2017, as further amended by Chapter 1193 of the Acts of Assembly of 2020 (as amended, “Chapter 382”); and

WHEREAS, Seller asserted in its proposal to the RFP and in additional submissions, and thereafter agreed pursuant to the negotiated terms of this Agreement, that from and after the Contract Date, Seller shall satisfy all of its other obligations under this Agreement, all in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

SECTION 1 THE SOLAR POWER PURCHASE AGREEMENT

1.1 Purpose. The purpose of this Agreement is to define the terms and conditions by which Seller shall (a) design, install, own, and finance the System, (b) manage, operate, maintain, decommission, and remove the System, (c) provide, deliver, and sell Output produced by the System to Purchaser, and (d) provide the other services, as more particularly described herein.

1.2 Effectiveness. Notwithstanding any provision in this Agreement that may be interpreted or construed to the contrary, the Parties shall neither be bound by the terms and conditions of this Agreement nor shall this Agreement have any force and effect unless and until each Party shall have executed and delivered this Agreement to the other Party hereto. Without limiting the generality of the foregoing, and notwithstanding Seller's execution and delivery of this Agreement, there shall be no legally binding agreement with respect to Purchaser regarding the transactions contemplated by and/or the subject matter of this Agreement unless and until Purchaser has duly executed and delivered this Agreement to Seller.

1.3 Cooperation. The Parties shall cooperate and exercise all reasonable efforts in the performance of their obligations and exercise of their rights under this Agreement to facilitate the timely and effective implementation of this Agreement. The Parties shall negotiate in good faith to address and endeavor to resolve disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for more formal resolution.

1.4 Content of this Agreement. The RFP, Seller's proposal (including all documents and materials submitted in connection therewith or to the County or Purchaser) in response to the RFP and the following Schedules are attached to and made a part of this Agreement:

SCHEDULES

Schedule 1	-	Definitions
Schedule 2	-	System Description
Schedule 3	-	Project Site
Schedule 4	-	Project Schedule
Schedule 5	-	Contract Price
Schedule 6	-	Annual Contract Quantity
Schedule 7	-	Form of Installation Notice to Proceed
Schedule 8	-	Form of Final Completion Certificate
Schedule 9	-	Form of Monthly Invoice
Schedule 10	-	Form of Lease Agreement
Schedule 11	-	Form of Environmental Attributes Attestation
Schedule 12	-	Form of Decommissioning Bond
Schedule 13	-	Representatives
Schedule 14	-	Security/Access Requirements
Schedule 15	-	Construction Safety Resolution

This Agreement, including the recitals hereto and the foregoing Schedules, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and the terms, conditions, and provisions of this Agreement, inclusive of the Schedules, shall govern the obligations of the Parties with respect to, among other things, Seller's development, management, operation, maintenance, and provision of the Services to Purchaser hereunder. To the extent of any conflict or inconsistency between the provisions of the body of this Agreement and the provisions of any Schedule, the RFP, and/or Seller's proposal, the conflict or inconsistency shall be resolved by giving priority in the order they are listed below:

- a) amendments to Solar Power Purchase Agreement,
- b) the provisions of Sections 1 through 14, in the order in which they appear,
- c) the terms of Schedules 1 through 15 (including without limitation the Lease Agreement), in the order in which they appear,
- d) Acceptance Agreement (as amended),
- e) The terms and conditions of Request for Proposal 2000002845 ("RFP") as revised by Addendum 4; provided, however, that the RFP is incorporated by reference for the sole purpose to construe but not to vary the terms of the PPA,
- f) Seller's proposal submitted on September 6, 2019,
- g) Seller's Best and Final Offer from November 14, 2019, and
- h) the signed Memorandum of Negotiations.

1.5 Definitions; Terms Generally. Capitalized terms not defined above or elsewhere in this Agreement shall have the respective meanings assigned to such terms in Schedule 1 (Definitions) attached hereto. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "approval" and "consent" shall be deemed to be followed by the phrases (a) "without limitation," except as the context may otherwise require, and (b) "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require. The word "or" is not exclusive. Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise. All references to "dollars" or "\$" in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

SECTION 2

TERM

2.1 Initial Term. This Agreement, unless sooner terminated in accordance with its terms or extended pursuant to Section 2.2, shall commence on the Contract Date and terminate at 12:01 a.m. (Eastern time) as follows: (i) for rooftop Systems, on the twenty-fifth (25th) anniversary of the Actual Commercial Operation Date and (ii) for canopy Systems, on the thirtieth (30th) anniversary of the Actual Commercial Operation Date (in either case, the "Initial Term").

2.2 Extension of Term. The Parties may mutually agree in writing to extend the Term for up to five (5) years, either one (1) year at a time or in multiple years that combine to equal no more than a total of five (5) years (each, an "Extended Term"). If either Party desires to extend the Term, such Party shall give the other Party at least ninety (90) Days prior Notice prior to the end of the then-applicable Term of such desire (including specifying the number of year(s) of the desired extension period) or this Agreement shall expire at the end of the Initial Term or Extended Term, as applicable. Once such Notice is given, the Parties shall promptly meet and discuss the extension of the Term. If the Parties cannot reach mutual agreement on such extension within such ninety (90) Day period, then this Agreement shall expire at the end of the Initial Term or Extended Term, as applicable. All of the terms, conditions, covenants, and provisions of this Agreement set forth herein with respect to the Initial Term shall apply to and remain in effect during each Extended Term, if any.

2.3 Term. The Initial Term and any and all Extended Term(s), if any, are referred to herein collectively as the “Term”.

SECTION 3 CONTRACT SERVICES GENERALLY

3.1 General Obligations. Seller shall, at its sole cost and expense, design, engineer, finance, install, construct, commission, interconnect, start-up, test, monitor, operate, maintain, decommission, and remove the System and perform the Services, in each case in a good, workmanlike, and professional manner and in accordance with Applicable Law and Prudent Industry Practices. Seller shall faithfully, diligently, competently and to the best of its ability pursue the development, financing, and installation of the System.

3.2 Compliance with Laws. Seller shall perform all Services in compliance with all Applicable Laws, and Seller shall ensure that all Subcontractors performing Services shall comply with all Applicable Laws in the performance thereof. Furthermore, Seller shall (and Seller shall ensure that all Subcontractors performing services relative to the Services do) comply with the more stringent of (a) Applicable Laws or (b) the obligations, requirements, and standards of this Agreement; provided, that compliance with the foregoing clause (b) is not a violation of Applicable Law. The System and all Services performed hereunder shall comply with all Codes and Standards.

3.3 Compliance with PPA Pilot Program Requirements. Seller shall comply with the PPA Pilot Program Requirements as in effect on the Contract Date. Seller shall prepare and timely file and submit all notices, data, and other information (or cause to be prepared and timely filed and submitted) to the SCC and other Persons required by the PPA Pilot Program Requirements. Promptly following each such filing or submission, Seller shall deliver copies to Purchaser.

3.4 OSHA Compliance. Without limiting the generality of Section 3.2, Seller shall comply with all Occupational Safety and Health Law requirements and other similar applicable safety laws or codes in the performance of the Services.

3.5 Permits; Licenses. Throughout the Term, Seller shall maintain and, as applicable, renew all such Permits required for its performance of the Services and shall be solely liable for the cost and expense of all regulatory fees, levies, assessments, and charges pertaining to such Permits. Without limiting the generality of the foregoing, if any Services involve building, construction, removal, altering, repairing, improving or demolition of, in or upon the Project Site, or if otherwise required by Applicable Law, then such work shall be performed only by a Person holding a then current Virginia Class A Contractor License with the specialty classification application to the work being performed. Upon request, Seller shall provide Purchaser with a copy of Seller’s and Subcontractors’ Virginia Class A Contractor License. The obligation to obtain and maintain such Permits is solely vested with Seller. Seller shall be solely responsible for, and pay when due, all fines, fees, and penalties pertaining to Permit violations and all other costs, fees, and expenses of performing all work included in administrative orders, notices or similar directives of violation that were the result of Seller Fault or caused by the occurrence of a Change in Law. If Seller receives notice of a Permit violation or is otherwise required to pay any fine or penalty imposed by any Governmental Authority for a Permit violation, Seller shall promptly deliver a copy of such notice to Purchaser. If Seller believes the Permit violation or regulatory fine or penalty is unjustified, Seller shall have the right to contest the regulatory fine or penalty at its sole cost and expense.

3.6 Safety Program. Seller shall (a) ensure that all of its employees and Subcontractors comply with the more stringent of all Applicable Laws, the County’s Construction Safety Resolution, a current copy of which is attached hereto as Schedule 15 (Construction Safety Resolution), as such Schedule may be updated by the County from time to time (whereupon such Schedule shall be deemed to have been

amended), or, to the extent applicable to Seller, industry recommendations concerning safety related issues, (b) develop safety manuals and amend the same, in each case consistent with clause (a) above, and ensure that all employees and Subcontractors are trained in safety, health, and environmental regulations and procedures specific to the Services, (c) take all reasonable precautions, in accordance with Prudent Industry Practices, to prevent damage, injury, or loss, by reason of or related to the provision of Services, (d) establish and maintain safety procedures for the provision of Services and for the protection of employees of Seller and all other Persons, at a level consistent with clause (a) above and otherwise consistent with Prudent Industry Practices, and (e) comply with all Applicable Laws relating to the safety of third parties or property and their protection from damage, injury, or loss. Seller shall provide immediate Notice, including reasonable details, to Purchaser whenever any emergencies (and actions taken in response thereto), work related accidents, injuries, or near misses occur at the Project Site.

3.7 Regulatory Reports. Seller shall, in a timely manner, generate, file in an organized and readily retrievable manner, store and provide to all Governmental Authorities all information, applications, renewals, and modifications of Permits, notices and reports, including operational data and reports, as may be required of Seller pursuant to and in form and substance specified by Applicable Law. Seller shall immediately notify in writing and provide Purchaser with any and all information as the same becomes available relative to any activity, problem, event, or circumstance that (a) threatens or may threaten compliance with the requirements of this Agreement, (b) disrupts or may disrupt performance of the System or any of the Services hereunder, or (c) requires notifications to Governmental Authorities.

3.8 Compliance With Schedules. Seller shall comply with each and every provision of the Schedules in all respects that is applicable to Seller and/or the performance of its obligations under this Agreement.

3.9 Guarantees. Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design, installation, testing, operation, maintenance, and decommissioning in a good, workmanlike, and professional manner and in accordance with the terms of this Agreement. Seller warrants that the System, including maximum generation capacity, shall be in conformance with and satisfy all PPA Pilot Program Requirements. Seller warrants that, on and following the Actual Commercial Operation Date and throughout the Term, the System, its engineering, design, and installation, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering, and installation. Seller shall exercise commercially reasonable efforts to timely undertake all updates and modifications to the System, and its equipment and materials, including procedures, programming, and software, required by Prudent Industry Practices. If at any time Purchaser reasonably believes that any personnel of Seller or its Subcontractor are not performing their duties in a good, workmanlike, and professional manner and in accordance with Prudent Industry Practices and Applicable Law, then Purchaser may provide Notice to Seller. Should Seller fail to promptly address and take action to correct such problem to the reasonable satisfaction of Purchaser, Purchaser shall have the right to require Seller to remove such personnel within one (1) Business Day after Seller's receipt of such Notice and Seller shall replace such personnel as soon as reasonably practicable thereafter. All costs associated with the replacement of such personnel under this Section 3.9 shall be borne by Seller. Notwithstanding the foregoing, Purchaser shall have the right to require the immediate removal and permanent expulsion from the Project Site and from any work associated with the Services of any person that at any time is found under the influence of or in possession of alcohol or illegal drugs, or who, in the reasonable determination of Purchaser or Purchaser's Representative, acts in an unsafe or negligent manner, while at the Project Site.

3.10 Subcontractors. Without limiting Seller's liability or obligations under this Agreement, Seller may engage Subcontractors to perform any Services under this Agreement. Seller shall use suitably qualified, experienced, and licensed Subcontractors. Seller shall remain fully liable and responsible for the work done by its Subcontractors and shall ensure compliance with all the requirements set forth herein.

Seller shall be responsible for the quality of the work performed by its Subcontractors. Any Subcontractors engaged by Seller to perform any portion of the Services shall have all licenses and registrations required to perform such services, and any such Subcontractor shall maintain the insurance required pursuant to Section 9.1 and satisfy the requirements of Section 3.11. Upon request, Seller shall provide to Purchaser with evidence that any such Subcontractor has obtained insurance as required pursuant to Section 9.1. Seller shall pay when due all charges from all Subcontractors, suppliers, and other Persons supplying goods or services to Seller in the performance of its Services under this Agreement.

3.11 Identification, Security and Access Requirements.

(a) Identification. All of Seller's employees and Subcontractors shall display Purchaser-issued identification badges above the waist at all times that such individuals are on the Project Site. Any employee, contractor or Subcontractor of Seller who arrives at the Project Site without required identification will be dismissed from the Project Site. All such employees, contractors, and Subcontractors must pass to the satisfaction of Purchaser a Fairfax County Criminal History Check. Notwithstanding the foregoing, Purchaser disclaims any liability with respect to the accuracy or completeness of the Criminal History Checks. Seller shall be solely responsible for all costs associated with such identification badges and Criminal History Checks.

(b) Inspection. All supplies, materials, and equipment for use at the Project Site are subject to security inspection by Purchaser.

(c) Other Security and Access Requirements. Seller shall, and shall cause all of its Subcontractors to, at all times comply with the identification, security, and other access requirements set forth on Schedule 14 (Security/Access Requirements).

(d) Amendments to Security and Access Procedures. Purchaser reserves the right to amend and/or update its security and access requirements or procedures relative to the Project Site, including Schedule 14 (Security/Access Requirements), from time to time upon at least twenty-four (24) hours' Notice to Seller, whereupon Schedule 14 (Security/Access Requirements) shall be deemed amended accordingly.

3.12 Liens. Seller shall not, directly or indirectly, cause, create, incur, assume, or allow to exist any Lien on or with respect to the Project Site, the Improvements, or any property of Purchaser. Seller shall indemnify, defend, and hold the Purchaser Indemnified Parties harmless from and against all Losses resulting from any Liens filed against Purchaser Indemnified Parties' property as a result of Seller's breach of its obligations under this Section 3.12.

3.13 Reporting Requirements.

(a) Monthly Reports. On or before the fifteenth (15th) Day of each Billing Month during the Term, Seller shall deliver a monthly report to Purchaser in electronic format (via email or two (2) electronic copies if in CD) acceptable to Purchaser, which shall include: (i) a performance summary of the Billing Month and Billing Year-to-date delivery of Output, (ii) descriptions of reasons for any downtime, maintenance, or repairs, and any curtailment periods and other curtailment events during the applicable Billing Month, and (iii) a safety and environmental summary. In addition, Seller shall provide to Purchaser, such other information regarding, permitting, engineering, financing, installation, interconnection, testing, or operations of the System, as Purchaser's Representative may, from time to time, request. Unless otherwise approved in writing by the County's Purchasing Agent, Seller may not sell or give to any Person any information, reports, or other materials given to, prepared, or assembled by, Seller under this Agreement.

(b) Meetings. As requested by Purchaser, Seller's Representative shall attend and, if requested, make a presentation at Purchaser's Board and/or other County or Purchaser meetings concerning the System, its operations and/or Seller's performance of the Services hereunder.

3.14 Hazardous Materials.

(a) Seller shall not, nor shall it permit any of its Subcontractors to bring, use, generate, or release any Hazardous Materials on the Project Site, other than Hazardous Materials to be used by Seller or any of its Subcontractors on the Project Site in a manner that (i) does not violate or contribute to a violation of, or whether individually or on an aggregate basis require reporting or disclosure to any Governmental Authority, Purchaser or any third party under, any Applicable Laws, (ii) is consistent with Prudent Industry Practices and is required for Seller to perform the Services, and (iii) complies with the Lease.

(b) Seller shall bear all responsibility and liability for all Hazardous Materials brought on the Project Site by Seller, or any of its Subcontractors, whether such materials are permitted to be brought on the Project Site pursuant to this Section 3.14 or are brought on the Project Site in violation of this Section 3.14. If any Hazardous Materials are encountered at the Project Site by Seller, Seller shall immediately, upon recognizing such condition (i) stop its work in the affected area of the Project Site, and (ii) provide Notice of such condition to Purchaser.

(c) Seller shall minimize the use of Hazardous Materials in the performance of its work, and all such use shall be as permitted under, and in accordance with, Applicable Law. Seller shall maintain an updated file on all material safety data sheets for all Hazardous Materials used or in connection with the performance of its work and shall deliver an update of such file to Purchaser upon request.

(d) Without limiting the generality of, and in addition to, Section 9.2, Seller shall indemnify, defend, and hold harmless all of the Purchaser Indemnified Parties from and against all Losses arising out of or relating to the existence at, on, above, below or near the Project Site of any Hazardous Materials to the extent deposited, spilled, or otherwise caused by Seller or any of its Subcontractors, agents, or employees.

(e) Seller shall be solely responsible for compliance with all Applicable Laws pertaining to Hazardous Materials brought, used, generated, or released in violation of Applicable Law to the extent caused by Seller, or any of its Subcontractors, at the Project Site and for disposing of all Hazardous Materials brought to or used on the Project Site in accordance with this Section 3.14 through a reputable waste disposal service conducted in compliance with all Applicable Laws, and Seller shall maintain written records of such disposal for such period as may be required by Applicable Law and shall provide such records to Purchaser upon request. This provision shall survive termination or expiration of this Agreement.

3.15 Clean-Up. Seller shall at all times keep the Project Site and the Services in a safe and orderly state, as appropriate in accordance with Prudent Industry Practices and any requirements of the Lease, to avoid danger to Persons on the Project Site and in the immediate vicinity of the Project Site, and take such measures as are reasonable in accordance with Prudent Industry Practices to prevent access to the Project Site of any Persons not entitled to be there. Seller shall at all times keep the Project Site reasonably free from waste materials or rubbish caused by its activities.

3.16 Coordination and Right to Inspect. Purchaser and its representatives, advisors, engineers, and consultants shall have the right (a) to observe and inspect all Services, subject in all cases to Seller's reasonable safety precautions, (b) to be present during commissioning and testing of the System and shall,

by way of example and not limitation, (c) to have access to test procedures, quality control reports, test reports, and data. Seller acknowledges and agrees that Purchaser and its representatives shall have the right to observe the Services at all times during the progress of the Services and to inspect and monitor the progress of the Services against the Project Schedule in order to verify compliance with the requirements set forth herein and to verify completion of each individual milestone as detailed in the Project Schedule and, in the case of Purchaser, take appropriate actions as may be required under this Agreement. No observation, inspection or review by Purchaser or its representatives shall constitute an approval, endorsement, or confirmation of any drawing, plan, specification, subcontractor, materials, or Services or an acknowledgment by Purchaser that such drawing, plan, specification, subcontract, materials, or Services satisfies the requirements of this Agreement; nor shall any such inspection or review relieve Seller of any of its obligations to perform the Services and furnish the materials or the Services.

3.17 Deliverables. Seller shall provide all deliverables to be provided to Purchaser hereunder pursuant to an online dataroom or other software program as may be requested by Purchaser.

3.18 Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for Services, or expenditures and disbursements charged to Purchaser for a minimum period of five (5) years, or for any longer period required by Applicable Law. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon five (5) Days Notice to Seller. Seller shall not charge Purchaser for Purchaser's inspection of records. Where Purchaser has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment, or termination of Seller's business, Purchaser may, by written request to any of Seller's named officers, require that custody of Seller's documents be given to Purchaser. Seller must include this requirement in all subcontracts related to this Agreement.

SECTION 4

PROJECT DEVELOPMENT CONDITIONS PRECEDENT

4.1 Seller Project Development Responsibilities. Promptly following the Contract Date, Seller shall, at its sole cost and expense, diligently and faithfully proceed to satisfy all of the following responsibilities (the "Development Tasks"):

(a) Due Diligence. Seller shall have an opportunity to conduct and complete due diligence and physical inspection of the Project Site, including engineering, technical, and structural reviews. Such due diligence shall also include site visits by Seller to the Project Site and other measures deemed reasonably necessary by Seller to perform its obligations hereunder. Prior to any visits by Seller or its Subcontractors to the Project Site, Seller shall coordinate and arrange such visits with Purchaser's Representatives.

(b) Permits; Governmental Authorizations; Interconnection. Seller shall complete the following: (i) obtain and pay for all Permits required to construct, install, operate and maintain the System, and (ii) obtain and pay for any authorizations and approvals from, and enter into agreements with, the Utility and Governmental Authorities having jurisdiction necessary to interconnect the System to the Site Electrical System and/or the Utility's electrical distribution system. All Permits and all other governmental and Utility authorizations, approvals, and agreements for the performance of the Services that are required to be obtained and in effect shall have been obtained by Seller, and Seller shall have provided reasonable proof of such authorizations, approvals, and agreements to Purchaser. If any of the Permits, agreements or authorizations are required to be in Purchaser's name, Purchaser shall take such actions as Seller may

reasonably request to apply for and obtain them, and Seller shall reimburse Purchaser for its actual third party costs incurred, subject to Cost Substantiation.

(c) Structural and Roof Analysis. This Section 4.1(c) shall only apply if the System is located on the roof of a building. Seller shall cause a Qualified Engineer to perform a full structural load analysis of the Project Site and perform a complete inspection of the roof system at the Project Site. The Initial Design (as described in Section 4.1(d)(i) below) shall detail any structural or other modifications that must be performed at the Project Site in order for the contemplated System to be installed. Seller acknowledges and agrees that none of Purchaser, the County, or any of its or their employees, contractors, or agents has made, nor shall they make, any express or implied warranty to Seller as to the integrity, condition, or future life of the roof system. In coordination with Purchaser, Seller shall coordinate with any obligors under any existing roof warranties, such that the warranties shall remain in effect in accordance with their terms, and no actions by Seller or its Subcontractors shall compromise or affect such warranties. If structural modifications or repairs to the roof system are required, Seller shall obtain at least two (2) written proposals from third party Persons qualified and licensed to perform the required scope of work and provide copies of the same to Purchaser. Purchaser shall have the option (i) to perform the work itself or with its own contractor(s) and pay for the costs of such work, (ii) to have Seller perform such work and cover such costs, whereupon the Contract Price may be adjusted by mutual written agreement of the Parties, or (iii) to immediately terminate this Agreement upon Notice to Seller.

(d) Initial Design, Project Schedule, and Annual Contract Quantity. Seller shall prepare and deliver to Purchaser:

(i) an initial design and engineering plan (the “Initial Design”) setting forth a description of the System (to be attached hereto as Schedule 2 (System Description)), including site plan, System design and layout, equipment specifications, expected System performance, warranty information, equipment location, metering equipment, structural reports (as described in Section 4.1(c)), roof or surface modifications (if necessary), and interconnection and integration of the System with the Project Site’s existing Improvements and the Site Electrical System;

(ii) a “critical path method” project schedule for the installation, interconnection, start-up, commissioning, and testing of the System and achievement of Final Completion, substantially in the form attached hereto as Schedule 4 (Project Schedule) (the “Project Schedule”); and

(iii) the Annual Contract Quantity, substantially in the form attached hereto as Schedule 6 (Annual Contract Quantity);

(e) Modifications to Initial Design, Project Schedule, and Annual Contract Quantity. Following receipt of the Initial Design, Project Schedule, and Annual Contract Quantity as provided in Section 4.1(d), Purchaser shall promptly review and, as soon as reasonably practicable, provide comments to such document by Notice to Seller but in no event shall such period to review and provide comments exceed thirty (30) Business Days following Purchaser’s receipt thereof. If Purchaser provides comments to Seller, Seller shall, within twenty (20) Business Days (or such longer period as may be agreed by the Parties), amend and modify such documents to Purchaser’s satisfaction and redeliver the following to Purchaser:

(i) a revised design and engineering plan (the “Revised Design”), setting forth a complete design and engineering plan, including the items required for the Initial Design, engineering drawings, specifications, identity of the portion(s) of the Project Site that will compromise the System site, laydown and staging areas, and routes of access for the System, and such other aspects to be included or reflected as requested by Purchaser;

- (ii) a revised Project Schedule, if amended; and
- (iii) a revised Annual Contract Quantity, if amended;

If Purchaser has no comments thereof, Seller shall deliver the Revised Design, Project Schedule, and Annual Contract Quantity, as amended, within twenty (20) Business Days following the end of Purchaser's thirty (30) Business Day review and comment period.

For any delay in Purchaser's review of any applicable document beyond Purchaser's thirty (30) Business Day review period pursuant to this Section 4.1(e), the Project Schedule (including the Expected Commercial Operation Date) shall be extended on a Day-for-Day basis.

(f) Acceptance of Final Design, Project Schedule, and Annual Contract Quantity. As soon as practicable but in no event longer than thirty (30) Business Days following receipt of the Revised Design, Project Schedule, and Annual Contract Quantity as provided in Section 4.1(e), Purchaser shall provide Seller with either (A) Notice accepting such documents, or (B) Notice explaining why Purchaser does not accept such documents and providing comments. The procedures described in this Section 4.1(f) shall be repeated as necessary until Purchaser has accepted the Revised Design, Project Schedule, and Annual Contract Quantity. Upon Purchaser's Notice to Seller accepting the Revised Design (whereupon such Revised Design shall be considered the "Final Design"), Project Schedule, and Annual Contract Quantity, such documents shall be deemed final and binding on the Parties, and Schedule 2 (System Description), Schedule 4 (Project Schedule), and Schedule 6 (Annual Contract Quantity), in the forms approved by Purchaser, shall be amended and attached to this Agreement. Each of the foregoing Schedules, including the Final Design, may be amended only upon the written approval of the Parties.

For any delay in Purchaser's review of any applicable document beyond Purchaser's thirty (30) Business Day review period pursuant to this Section 4.1(f), the Project Schedule (including the Expected Commercial Operation Date) shall be extended on a Day-for-Day basis.

(g) Decommissioning Bond. Seller shall have obtained and delivered the Decommissioning Bond, satisfying the requirements set forth in Section 8.2, to Purchaser.

(h) Required Seller Insurance. Seller shall have furnished to Purchaser evidence that Seller has secured and has in effect all Required Seller Insurance meeting the requirements of Section 9.1.

(i) Lease Agreement. Seller shall have executed and delivered the Lease to Purchaser.

4.2 Satisfaction of Development Tasks; Installation Notice to Proceed. Seller shall provide Notice to Purchaser within five (5) Business Days when all of the Development Tasks have been satisfied or achieved by Seller (the "Development Completion Notice"), and Seller is ready to proceed with installation of the System. Notwithstanding anything herein to the contrary, Seller shall not proceed with any portion of installation of the System until Purchaser, in its sole discretion, (i) executes and delivers the Lease to Seller, and (ii) delivers a Notice to proceed (the "Installation Notice to Proceed") to Seller.

4.3 Failure to Complete Project Development Responsibilities. If any of the Development Tasks have not been satisfied in their entirety (or otherwise waived in writing by Purchaser, in its sole discretion) within one hundred twenty five (125) Business Days (and such 125 Business Day period shall not include time for reviews or modifications pursuant to Section 4.1 and shall be extended on a day-for-day basis pursuant to Section 4.1), then either Party may terminate this Agreement upon thirty (30) Days Notice of such termination to the other Party. Notwithstanding anything herein to the contrary, at any time after the Contract Date but prior to issuance of the Development Completion Notice, either Party may

immediately terminate this Agreement upon Notice to the non-terminating Party. In the event of termination pursuant to this Section 4.3, neither Party shall be liable for any payment, damages or penalty as a result of such termination

SECTION 5 INSTALLATION OF THE SYSTEMS

5.1 Installation and Commissioning of the System. Following Seller's receipt of the Installation Notice to Proceed from Purchaser, Seller shall, at its sole cost and expense, promptly and diligently proceed to undertake, perform, and complete installation, start-up, commissioning, and testing of the System in accordance with the approved Final Design and Project Schedule, and the terms of this Agreement.

5.2 Installation Schedule.

(a) Seller shall provide Notice to Purchaser at least fifteen (15) Days prior to commencement of installation of the System. Seller shall coordinate, arrange, and schedule all installation activities with Purchaser's Representative to minimize interference with operations and activities at the Project Site.

(b) Seller shall complete installation of the System within the time provided in the Project Schedule. The Parties agree that time is of the essence in connection with the completion of the System, and that, subject to Section 11.1 (Force Majeure Event), milestones for installation of the System must be achieved in a timely fashion; provided, however, that lateness shall not be considered a material breach unless the non-breaching Party provides written notice of any claimed breach and an opportunity for the breaching Party to cure in accordance with Section 12.1 (Seller Events of Default). Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more required date(s) set forth in the Project Schedule, for any reason including for a Force Majeure Event, Seller shall immediately provide Notice to Purchaser. Such Notice shall describe, in reasonable detail (i) the cause of the delay, (ii) any impact such delay may have on achieving Final Completion, including a revised Project Schedule, if applicable, and (iii) the measures being taken or to be taken by Seller to mitigate such impact. Purchaser may, in its sole discretion, grant extensions to the Project Schedule or waivers for Seller's failure to meet any of the milestones set forth therein; provided, in no way shall any such extension or waiver constitute a waiver of any future failures by Seller to meet other milestones.

5.3 Reporting. During the Installation Period, Seller shall provide weekly (on Friday of each week) status reports to Purchaser (or on such other schedule as is mutually acceptable by the Parties). Seller's Representative shall attend such meetings requested by Purchaser, detailing the status of the installation of the System and Seller's progress in achieving the Project Schedule. Seller shall create, maintain, and provide to Purchaser minutes of meetings between the Representatives during the design, engineering, installation, and commissioning phase of the System.

5.4 Seller Control of the Services; No Purchaser Responsibility. Seller shall have total control of the Services, including design, installation, start-up, commissioning and all other work involved with the System, and shall effectively direct and supervise the Services so that they are undertaken in compliance with the terms of this Agreement. Seller shall have the sole and exclusive responsibility and liability for the design, installation and performance of the System, notwithstanding Purchaser's review, comment or approval of the Initial Design, Revised Design, or Final Design; the fact that the RFP included certain standards or requirements for any of the Services; or the fact that Purchaser participated in certain design development activities that resulted in the finalization of the Final Design. Nothing in this Agreement shall be interpreted as giving any responsibility for any of the Services to Purchaser or any Purchaser Indemnified

Party. Purchaser's rights of review and comment with respect to any aspect of the Services shall be for Seller's benefit only, and no review or comment by Purchaser shall in any way relieve Seller of its obligations for all aspects of the Services.

5.5 Laydown; Staging Area. Purchaser shall provide, at no cost to Seller, one or more temporary laydown areas equal to (i) at least seventy five percent (75%) of the area receiving canopy for a canopy System or (ii) at least twenty five percent (25%) of the rooftop square footage, located on ground level, for rooftop Systems, in each case designated as laydown area for Seller's use for the storage of equipment, facilities and materials to be incorporated into the System, along with any installation and testing equipment and materials to be used in the installation or testing of the System. If any such areas are permitted and authorized by Purchaser, Schedule 3 (Project Site) shall designate such areas. Seller acknowledges that its use of such areas is at its own risk and that Purchaser shall not be responsible or liable for any Loss that Seller, its Subcontractors or other Persons sustains in connection with its or their use of such areas. Seller shall keep all temporary laydown areas clean and orderly and shall restore them to their original condition.

5.6 Installation Period Electricity. Upon Notice to and in coordination with Purchaser, Seller may test the System and deliver all Output resulting from such testing during the Installation Period. Purchaser shall accept delivery of all Output resulting from such testing, but shall not be required to pay for such Output delivered during testing.

5.7 Refuse. Seller shall reduce and mitigate noise, dust, and the spread of debris and materials. Seller shall remove all debris, extra materials, scaffolding, tools, machinery, and other materials and leave all portions of the Project Site clean and ready to use.

5.8 Damage to Site. Without limiting the generality of Section 9.2, Seller shall be responsible to repair and promptly pay Purchaser for any damage to any portion of Purchaser's property, including the Project Site, caused by Seller's or its Subcontractors' installation, start-up, commissioning, operation or maintenance of the System.

5.9 Inspections; Interconnection.

(a) Seller shall conduct and supervise all building, electrical, civil, environmental and structural inspections in connection with installation, testing, and commissioning of the System.

(b) Seller shall interconnect the System to the Site Electrical System and shall purchase and install, and be solely responsible for, all equipment, maintenance, and repairs associated with such interconnection equipment. If requested by Purchaser, Seller, shall assist and cooperate with Purchaser in applying for and coordinating arrangements or agreements with the Utility relative to interconnection of the System, including completing requests for interconnection, as may be required by the Utility to permit the interconnection of the System with the Site Electrical System and to allow any Output of the System not consumed by Purchaser to flow to the Utility. Seller shall be responsible for all reasonable costs of equipment required to interconnect the System to the Utility electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance, including any upgrades or modifications associated with the interconnection of the Site Electrical System. In no event shall Purchaser be responsible for installing or maintaining the interconnection facilities, or for the cost or expense associated therewith. For the avoidance of doubt, Seller acknowledges and agrees that the Purchaser shall remain the sole account holder with Utility and all revenues, costs, credits, payments, proceeds, monies or other remuneration paid, payable, or deliverable from or to the Utility related to the net metering arrangement or agreement relating to the System shall accrue for the sole account and benefit of Purchaser. If any such revenues, credits, payments, proceeds,

monies or other remuneration is paid or delivered to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.

(c) Seller is responsible for conducting and supervising the electrical inspections for the System as part of the Services. Before Final Completion is achieved, Seller shall schedule an electrical inspection of the System with the appropriate Governmental Authorities and shall provide to Purchaser a completed inspection certificate from each such Persons, which certificate(s) shall be in form and substance satisfactory to Purchaser. If, for any reason, the System does not receive a satisfactory inspection certificate, Seller shall repair or correct any defect or deficiency that caused such failed inspection at Seller's cost. Upon completion of such repairs or correction, Seller shall cause such electrical inspection to be re-performed in accordance with this Section 5.9(c).

(d) Seller is responsible for conducting and supervising all Utility inspections for the System as part of the Services. Seller shall coordinate with Purchaser's Representatives to schedule and attend Utility inspections of the System. Further, Seller shall provide Purchaser with at least five (5) Business Days' Notice prior to installation of the Meter(s). Following receipt by Seller of a satisfactory inspection certificate for the System pursuant to Section 5.9(c), as a condition to Final Completion of the System, Seller shall schedule an inspection of the System by the Utility, if required to do so. Seller shall present evidence satisfactory to Purchaser that the System is authorized to be connected. If, for any reason, the System does not receive a satisfactory inspection certificate or Seller is unable to provide such satisfactory evidence, Seller shall repair or correct any defect or deficiency that caused such failed inspection at Seller's cost.

5.10 Final Completion.

(a) On or before the Day that is five (5) Business Days after the Date on which Seller believes that Final Completion has been achieved, Seller shall submit to Purchaser a Final Completion Certificate, along with all documentation necessary for Purchaser to determine if Final Completion has been achieved and indicating Seller's proposed Actual Commercial Operation Date.

(b) Following receipt of such Final Completion Certificate, Purchaser shall review such certificate and documentation for purposes of determining if Final Completion has been achieved and consideration of the proposed Actual Commercial Operation Date.

(c) At the discretion of Purchaser, the Parties may schedule and arrange for an inspection of the System. Such inspection shall be scheduled for a date, mutually agreeable to Seller and Purchaser. Based on the inspection, Purchaser may prepare and deliver to Seller a punch list of any observed defects or deficiencies (the "Punch List"). Seller shall, at its sole cost and expense, promptly correct and address the items on the Punch List and shall provide Notice to Purchaser when such all such items on the Punch List have been corrected. If requested by Purchaser, Seller shall schedule and arrange a follow-up inspection for Purchaser after all Punch List items are resolved. All Punch List items shall be resolved prior to the Actual Commercial Operation Date, unless otherwise agreed in writing by Purchaser.

(d) Following Purchaser satisfaction, in its discretion, of Final Completion of the System, Purchaser shall countersign and deliver to Seller the Final Completion Certificate to indicate its agreement that Final Completion has been achieved and the Parties' agreement of the Actual Commercial Operation Date for purposes of this Agreement.

(e) Not later than twenty (20) Business Days following Final Completion, Seller shall deliver to Purchaser (i) two (2) electronic copies of the final draft of the final design specifications of the System (if amended), (ii) final "as-built" plans and line diagrams/drawings stamped and certified by a

Qualified Engineer, (iii) all shop drawings and test reports, including performance test reports and commissioning documents for the System, and (iv) such other documentation or materials reasonably requested by Purchaser.

5.11 Purchaser's Right to Suspend.

(a) Purchaser may, at any time after Notice to Seller specifying the effective date of the suspension (a "Suspension Notice"), require Seller to suspend its installation and commissioning work, or any portion thereof. Upon receipt of a Suspension Notice, Seller shall take reasonable steps to suspend its work as soon as reasonably possible and to secure the Project Site for the expected period of the suspension. If Purchaser suspends Seller's installation and commissioning work without cause (i.e., other than as a result of a Force Majeure Event or Seller Event of Default), Purchaser shall reimburse Seller for reasonable costs and expenses, subject to Cost Substantiation, actually incurred and payable by Seller to protect the Project Site and materials and equipment that would not have been incurred as part of its work.

(b) Upon providing a Suspension Notice to Seller, Purchaser shall promptly arrange to discuss with Seller the specific requirements of the suspension and whether or not Purchaser anticipates that demobilization, remobilization, or idle equipment will occur as a result of the suspension.

(c) Upon receiving a Suspension Notice, Seller shall discontinue the suspended work, place no further purchase orders (specific to the System) or subcontracts with respect to the suspended work, and promptly make reasonable efforts to obtain reasonably satisfactory suspension terms with respect to all purchase orders, subcontracts, supply contracts, and rental agreements specific to the suspended work. Seller shall continue to perform all other portions of the Services that have not been suspended by Purchaser.

(d) Purchaser may, at any time, authorize the resumption of the suspended work or any part thereof, by giving Seller reasonable Notice specifying the part of the suspended work to be resumed and the effective date of such resumption. Seller shall resume the suspended work on the date and the extent specified in such Notice.

(e) Seller shall use its employees, Subcontractors, equipment, and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the suspended work. During the period of the suspended work, Seller shall secure and protect the suspended work and all materials and equipment to be used or incorporated therein.

(f) Purchaser's suspension of the work as provided in this Section 5.11 shall extend the Project Schedule (including the Expected Commercial Operation Date) on a Day-for-Day basis, or as mutually agreed by the Parties.

SECTION 6

PURCHASE AND SALE; DELIVERY AND METERING; PERFORMANCE GUARANTEE; OPERATION AND MAINTENANCE

6.1 Purchase and Sale of Output. Beginning on the Actual Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all of the Output generated by the System; provided, however, in no event shall Purchaser be required to purchase Output in excess of the lesser of (i) the amount allowable under the PPA Pilot Program Requirements, or (ii) [] kWhs per Billing Year (as adjusted pro rata for any partial Billing Year). Any Output not immediately usable by Purchaser shall be exported to the Utility pursuant to interconnection and/or net metering agreements. Title to and risk of loss for the Output generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that

it will deliver all Output and all of the associated Environmental Attributes to Purchaser free and clear of all Liens created by any Person other than Purchaser.

6.2 Delivery Point. Seller shall be responsible for all costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Purchaser shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

6.3 Data Line. If the Project Site has an internet data line, Purchaser may, in its discretion, provide access to an internet data line at the Project Site to enable Seller to record the Output generated by the System. Seller is responsible, at its sole cost, for providing all means of connection to the internet data line, including boring, conduit, and wire, as applicable. Seller shall comply with all policies, procedures, and requirements of Purchaser for use of Purchaser's internet data line, and any violation or misuse thereof may permit Purchaser to suspend or terminate such use. Seller assumes all risks associated with use of the internet data line, including any loss of internet data connectivity or service. If Purchaser is unable to provide access to an internet data line or if such data line is unavailable or out of service, Seller shall, at its sole cost and expense, promptly install and operate a cellular communications device to acquire the necessary production data.

6.4 Measurement; Online Monitoring System.

(a) Meter. Seller shall, at its sole cost and expense, install, operate, maintain, repair, replace, and test the Meter at the Delivery Point to measure the amount of Output delivered by Seller to Purchaser and actually consumed by Purchaser. Seller shall operate and maintain the Meter in accordance with Prudent Industry Practices.

(b) Meter Reading. Seller shall read the Meter at the end of each Billing Month and shall record the Output delivered to Purchaser. The Meter shall be used as the basis for calculating the amounts to be invoiced pursuant to Section 10. Purchaser shall have access to the metered energy output data via the online monitoring system installed and maintained by Seller as part of the System. In addition, upon request, Seller shall provide to Purchaser hardcopy records from the Meter.

(c) Meter Calibration.

(i) Seller shall, at its sole cost and expense, calibrate the Meter prior to its installation and at least annually thereafter to ensure the accuracy of the Meter. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. Purchaser may request that Seller perform more frequent testing, however any such testing in excess of the annual tests shall be at Purchaser's expense, subject to Cost Substantiation, if such tests indicate that the Meter is within plus or minus two percent (2%). Purchaser shall be entitled to witness such tests and Seller shall provide Purchaser with such test results.

(ii) If, upon testing, the Meter is found to be accurate or in error by not more than plus or minus two percent (2%), then the previous recordings of such Meter shall be considered accurate in computing deliveries of Output hereunder, but such Meter shall be promptly adjusted to record correctly, if needed.

(iii) If, upon testing, the Meter is found to be inaccurate by an amount exceeding plus or minus two percent (2%), then Seller shall promptly repair or adjust such Meter and any previous recordings by such Meter shall be corrected to zero error. If no reliable information exists as to the period over which such Meter registered inaccurately, it shall be assumed for purposes of correcting

previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such Meter was tested and found to be accurate.

(iv) If, upon testing, the Meter is found to be in error by an amount exceeding plus or minus two percent (2%), then the payments for Output made since the previous Meter test shall be adjusted to reflect the corrected measurements. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number, that difference shall offset amounts owing by Purchaser to Seller in subsequent Billing Month(s). If the difference is a negative number, the difference shall be added to the next Billing Month's invoice and paid by Purchaser to Seller.

(d) Online Monitoring System. Seller shall, at its sole cost and expense, provide, and maintain the necessary software and hardware, including periodic updates and upgrades during the Term consistent with Prudent Industry Practices, for Purchaser and the general public to monitor the Electricity generated by the System. Seller shall provide and maintain, at its cost, the necessary hosting services and access to a cloud-based system that Purchaser may access at any time. Seller shall provide, host, and operate a public-facing dashboard that may be accessed by a hyperlink Purchaser may place on its website.

6.5 Performance Guarantee.

(a) Output Guarantee. Beginning on the Actual Commercial Operation Date and during each Billing Year throughout the Term, Seller guarantees to deliver Output to Purchaser not less than ninety percent (90%) of the Annual Contract Quantity (in kWh) for such Billing Year, as adjusted by the Site Adjustment Factor (the "Output Guarantee"). The Output Guarantee in any Billing Year shall be reduced by the amount (in kWh), as reasonably estimated by the Parties, of Electricity that Seller was unable to produce and sell to Purchaser as a result of (i) a Force Majeure Event, (ii) a curtailment by Purchaser in excess of the Outage Allowance, or (iii) other actions of Purchaser.

(b) Annual Performance Guarantee Statement. Within thirty (30) Days following the end of each Billing Year, Seller shall prepare and deliver to Purchaser a statement (the "Annual Performance Guarantee Statement") setting forth (i) the amount (in kWh) of Output delivered to Purchaser during such Billing Year, (ii) the amount (in kWh) of the Output Guarantee for the Billing Year and any reductions described in Section 6.5(a) proposed to be applied against and reduce such Output Guarantee during such Billing Year, and (iii) the calculation of the Shortfall Damages, if any, due by Seller to Purchaser for such Billing Year.

(c) Shortfall Damages. If, in any Billing Year, Seller fails to meet the Output Guarantee, Seller shall pay to Purchaser, as liquidated damages, an amount (the "Shortfall Damages") equal to the product of (i) the amount (in kWh) by which the Output Guarantee for the Billing Year exceeds the actual Output to Purchaser during such Billing Year times (ii) the positive difference between (A) the average all-in rate (\$/kWh) as reasonably calculated by Purchaser by using the prior twelve (12) months host utility billings, paid or payable by or on behalf of Purchaser to the Utility for electricity supplied by the Utility (taking into account any and all distribution service, customer, distribution demand, and electricity supply service charges, and all other charges, riders, and adjustments) to the Project Site minus (B) the Contract Price (\$/kWh) for the applicable Billing Year. In no event shall the Shortfall Damages be less than zero dollar (\$0). Unless Purchaser disputes the data or calculations set forth in the Annual Performance Guarantee Statement within thirty (30) Days following receipt thereof, the Shortfall Damages, if any, shall be applied against and reduce the Monthly Invoice payable by Purchaser to Seller for the immediately succeeding Billing Month, or upon Purchaser's request, Seller shall pay the Shortfall Damages to Purchaser. The Parties acknowledge and agree that the damages that Purchaser would incur due to shortfalls in Output would be difficult or impossible to predict with certainty, and it is impractical and

difficult to assess actual damages in those circumstances and, therefore, Shortfall Damages are a fair and reasonable calculation of such damages.

6.6 Operation and Maintenance of the System. Seller shall, at its sole cost and expense, (a) operate, maintain, test, repair and replace the System consistent with Prudent Industry Practices and (b) perform all corrective, predictive, preventive, and routine maintenance to the System consistent with Prudent Industry Practices, including repairs and replacements, to maintain the equipment and System, such that they are kept and maintained in good physical, mechanical and operational condition. Purchaser understands that the System contains intermittent generation facilities and will not provide Purchaser with a continuous supply of Electricity. The System will operate in parallel to the host utility provider and will not affect the host's ability to provide Electricity. SELLER MAKES NO WARRANTY OR GUARANTEE TO PURCHASER WITH RESPECT TO THE CONTINUOUS SUPPLY OF ELECTRICITY. Seller shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term except with regard to the Output Guarantee. If at any time Seller determines with reasonable belief that the existing electrical equipment to which the System is connected is unsafe, Seller shall not have the obligation to supply Electricity to Purchaser. Any costs incurred in restoring service following the interruption of operation of the System as a result of Seller's maintenance and repairs of the System shall be borne by Seller. Any costs incurred in restoring the operation of the System as a result of Purchaser or the condition of the existing electrical equipment to which the System is connected shall be borne by Purchaser.

6.7 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 (a) provide at least ten (10) Days' advance Notice to Purchaser of any scheduled repair or maintenance of the System, except in the case of an emergency, in which case, Purchaser shall provide immediate verbal notice to Seller's Representative, and within two (2) Business Days, provide Notice to Seller's Representative describing, in reasonable detail, the emergency, (b) coordinate and arrange with Purchaser as to the particular day(s) and time(s) in which maintenance and repair of the System is performed, (c) minimize any interruption in service to Purchaser, and (d) limit any such suspension of service to weekend or off-peak hours. Maintenance and repairs to the System shall be undertaken and performed at Seller's sole cost and expense.

6.8 Breakdown Notice. Seller shall provide prompt Notice to Purchaser and, in any event, within twenty-four (24) hours, following Seller's discovery of (a) any material malfunction in the operation of the System, or (b) an interruption in the supply of Electricity from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice (including telephonic notice) of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

6.9 Outages. Upon Purchaser's written request to Seller, Seller shall take the System off-line for a total of up to forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Billing Year (each event an "Outage", and the forty-eight (48) hour period, the "Outage Allowance"). To the extent reasonably practicable, Purchaser's request shall be delivered at least twenty-four (24) hours in advance. Purchaser is not obligated to accept or pay for Output from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Billing Year, the Parties shall reasonably estimate in good faith the amount of Output that would have been delivered to and purchased by Purchaser during such excess Outages, and Purchaser shall pay Seller for such amount in accordance with this Agreement.

6.10 Roof and Surface Repairs. This Section 6.10 shall only apply if the System is located on a parking surface or the roof of a building. If the roof system or parking surface, as applicable, at a Project Site requires repair not caused by Seller or the System and all or a portion of the System must be temporarily

removed, Purchaser shall provide as much Notice to Seller as reasonably practicable. Following receipt of such Notice and in coordination with Purchaser, Seller shall promptly remove and store the System (or the portion requested thereof), but in any event, within ninety (90) Days. In the event the roof or surface repair timeline changes, Purchaser may request a commensurate delay in the Systems' removal provided Seller has not already mobilized to the Project Site to begin the removal. In no event will Seller be obligated to accelerate the removal schedule earlier than ninety (90) Days for a non-emergency roof repair. If Purchaser determines that the roof system or parking surface requires an emergency repair, Seller shall remove the System within forty-eight (48) hours of Purchaser's Notice, or sooner if the repair is urgent. If Seller cannot remove the System within the emergency time frame specified by Purchaser in such Notice, Seller hereby authorizes Purchaser or its contractor(s) to remove and store the System at Purchaser's cost and expense. Upon completion of any roof or surface repair, in coordination with Purchaser, Seller shall reinstall and recommission the System at the Project Site in accordance with the provisions of this Agreement. Purchaser shall reimburse Seller for its actual costs, subject to Cost Substantiation, incurred by Seller in removing, reinstalling and recommissioning the System, as applicable, at the Project Site. If any part of the System is offline for more than five (5) Days due to a roof or surface repair not caused by Seller or the System, for each Day the a part of the System is offline, the Parties shall reasonably estimate in good faith the amount of Output that would have been delivered to and purchased by Purchaser during such period, and Purchaser shall pay Seller for such amount in accordance with this Agreement.

6.11 Obstructions. Except in the case of an emergency or performance of routine maintenance or repair of the buildings or other improvements on the Project Site, Purchaser shall not, to the extent within its reasonable control, install or permit to be installed or permit to occur on the Project Site any physical obstruction that materially reduces, or is reasonably likely to materially reduce, the production of Output. If such obstruction is installed by Purchaser or otherwise occurs and no emergency exists, and such obstruction has the effect of decreasing the Output of the System by more than one tenth of one percent (0.10%) of the Output Guarantee for the relevant Billing Year (as pro rated for a Billing Month basis) for a period of two (2) Billing Months or longer, the Parties shall promptly meet and discuss options for removal of said obstruction, if capable of removal. If such obstruction is unable to be removed within thirty (30) Days and is as a result of action by Purchaser, the Parties shall promptly meet and negotiate in good faith a possible amendment to this Agreement to accommodate for such lost production revenue of Seller.

SECTION 7

OWNERSHIP OF THE SYSTEM, ENVIRONMENTAL ATTRIBUTES AND TAX BENEFITS; SYSTEM PURCHASE OPTION

7.1 Ownership of the System. Throughout the Term, unless Purchaser exercises its Purchase Option or title and ownership is transferred pursuant to Section 7.4, Seller shall be the legal and beneficial owner of the System, 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 Project Site or any Improvement on which the System is installed. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

7.2 Environmental Attributes.

(a) For and in consideration of Purchaser entering into this Agreement, and in addition to the agreement by Purchaser and Seller to purchase and sell Output on the terms and conditions set forth herein, Seller hereby transfers, assigns and conveys to Purchaser, and Purchaser accepts and receives from Seller, all right, title, and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Purchaser from Seller hereunder. Seller shall transfer and make such Environmental Attributes available to Purchaser

immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Environmental Attributes. Seller acknowledges and agrees that the Contract Price includes the full compensation for the transfer and sale of the Environmental Attributes to Purchaser.

(b) Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of any portion of the Environmental Attributes to any Person other than Purchaser.

(c) Seller shall not report to any Person that the Environmental Attributes granted hereunder to Purchaser belong to anyone other than Purchaser, and Purchaser may report under any program that such attributes purchased hereunder belong to Purchaser. Seller shall not make any filing or statements inconsistent with Purchaser's ownership of the Environmental Attributes.

(d) If requested in writing by Purchaser, and at Purchaser's expense, Seller shall register the System with the RTO, and take all other actions necessary to ensure that the Output or Environmental Attributes produced by the System are issued and tracked through RTO for purposes of satisfying the requirements of any Virginia renewable energy portfolio standard and transferred to Purchaser, as applicable.

(e) Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Purchaser an attestation of Environmental Attributes produced by the System and purchased by Purchaser in the preceding Billing Year. On or before the anniversary of each Billing Year following the Actual Commercial Operation Date, Seller shall document the transfer of Environmental Attributes to Purchaser hereunder by executing and delivering to Purchaser an attestation of Environmental Attributes transferred under this Agreement in the preceding Billing Year. The form of attestation is set forth as Schedule 11 (Form of Environmental Attributes Attestation). Schedule 11 (Form of Environmental Attributes Attestation) may be revised or amended by Purchaser as necessary to ensure that Purchaser receives full and complete title to, and the ability to record with any EA Agency as its own, all the Environmental Attributes purchased hereunder.

(f) Purchaser acknowledges that for Seller to transfer RECs to Purchaser, Purchaser will need to have a GATS account with PJM (as defined in PJM rules). So long as Purchaser has a PJM GATS account in place, then no later than July 15th of each year after the first anniversary hereof, Seller will transfer RECs created for the previous Reporting Year. If Purchaser does not have a PJM GATS account in place, and Purchaser so requests, Seller will retire RECs (that have not expired) on Purchaser's behalf. For accounting purposes, the RECs will transfer to Purchaser upon their retirement or upon Seller initializing the transfer of the RECs in PJM GATS, without further action by Seller or Purchaser.

(g) At Purchaser's option, the Parties, each at Purchaser's expense, shall execute and deliver to Purchaser or such other Person as requested by Purchaser all such other documents and instruments in order to effect the transfer of Environmental Attributes specified in this Agreement to Purchaser or its designee(s), as Purchaser may request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers. If the sale or proceeds from any Environmental Attributes are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.

7.3 Ownership of Tax Benefits. Seller, as owner of the System, is the owner of all Tax Benefits. Seller acknowledges and agrees that Purchaser has made no statements, representations or warranties regarding the eligibility of the System for the Tax Benefits, and Seller is not relying on any

statement, representation, or warranty by Purchaser or any third party with respect to the Tax Benefits in entering into this Agreement.

7.4 Purchase Option; System Transfer.

(a) Exercise of Option. At the end of (i) the seventh (7th) and fifteenth (15th) Billing Years and (ii) the Initial Term and each Extended Term, as applicable, Seller hereby grants to Purchaser the option (the "Purchase Option"), in Purchaser's sole discretion, to purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System as of the date of the transfer of title to the System. Purchaser shall deliver Notice to Seller of its intent to exercise the Purchase Option at least ninety (90) Days prior to the end of the applicable Billing Year or the Initial Term or Extended Term, as applicable.

(b) Fair Market Value. The Fair Market Value of the System shall be determined by mutual agreement of the Parties; provided, however, (i) 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 exercise the Purchase Option or (ii) in the case where Seller has delivered Notice to Purchaser terminating this Agreement for a Purchaser Event of Default or Purchaser has delivered Notice to Seller terminating this Agreement for convenience in accordance with Section 12.5(d), as applicable, the Parties shall cooperate and 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.

(c) Title Transfer; Warranties; Manuals. If (i) Purchaser exercises its Purchase Option or (ii) this Agreement is terminated as a result of a Purchaser Event of Default pursuant to Section 12.2 or termination for convenience pursuant to Section 12.5(d) (unless Purchaser decides not to acquire the System), the Parties shall arrange the sale of the System under customary terms and conditions for the purchase and sale of a facility of the type and size as the System, which terms and conditions shall provide, among other things, that (i) Seller shall transfer good and marketable title to the System, free and clear of all Liens, to Purchaser (or its designee) upon Seller's receipt of (A) the purchase price if Purchaser exercises its Purchase Option or (B) the applicable Termination Payment if this Agreement is terminated pursuant to Section 12.2 or 12.5(d), but otherwise the System will be sold "as is, where is, with all faults", (ii) Seller will transfer and provide to Purchaser all System operation and maintenance manuals and logs and provide Purchaser and/or its designee(s) training on the operation and maintenance of the System upon Purchaser's request, at no cost to Purchaser, (iii) Seller will assign to Purchaser (or its designee) any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, (iv) Seller shall provide to Purchaser (or its designee) an irrevocable, permanent, transferable, exclusive, royalty-free license to use any intellectual property rights associated with the System, including software, patents, copyrights, intellectual property, and other proprietary information relating to the specification, design, installation, operation, or maintenance and repair of the System, as well as training processes and the contents of service and maintenance manuals and test and inspection procedures, and (v) upon such transfer of title, this Agreement shall automatically, and without further action of either Party, terminate. Seller shall provide all necessary cooperation with Purchaser to give prompt effect to this transfer.

SECTION 8

SYSTEM REMOVAL; DECOMMISSIONING BOND

8.1 Removal of System upon Termination or Expiration. Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option pursuant to Section 7.4) or Purchaser elects not to acquire ownership of the System in accordance with Sections 12.4(b) or 12.5(d), Seller shall, at its sole cost and expense, remove the System from the Project Site, as applicable, (i) within sixty (60) Days after the expiration of this Agreement or (ii) within one hundred eighty (180) Days after any earlier termination of this Agreement; provided, however, that for terminations for the convenience of Purchaser under Section 12.5(d) or a Purchaser Event of Default, all such costs shall be solely for the account of Purchaser. In addition, Seller shall, at its sole cost and expense (unless terminated for convenience or a Purchaser Event of Default), restore the Project Site where the System was located to its original condition (excluding ordinary wear and tear), including removal of System above grade mounting pads or other support structures, and repair and restoration of (i) if the System is installed on a roof, the roof and the roof membrane, or (ii) if the System is installed on a parking lot or parking structure, the parking surface, including resurfacing, patching, and/or re-filling the surface. If the System is located on a roof of a building, in no case shall Seller's removal of the System affect the integrity of the roof system, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications and Purchaser's then-existing roof warranties. Purchaser shall reasonably cooperate and provide sufficient access to the Project Site as reasonably necessary to facilitate System removal and roof or surface repair, and Seller shall coordinate and arrange with Purchaser's Representative on mutually convenient date(s) for removal of the System and repair of the roof or surface. If Seller fails to remove the System (for reasons other than a Purchaser termination for convenience or a Purchaser Event of Default) by such agreed-upon date, Purchaser may, at its option and without the consent or approval of Seller, remove the System or engage one or more contractor(s) to remove the System and store at a public warehouse or sell or dispose of such System, with such proceeds, if any, applied to amounts owed to Purchaser and the remaining amount, if any, remitted to Seller, and restore the Project Site to its original condition (other than ordinary wear and tear), all at Seller's sole cost and expense.

8.2 Decommissioning Security.

(a) Decommissioning Bond. As security for the performance of Seller's obligations under Section 8.1 (collectively, "Decommissioning"), prior to the issuance of the Installation Notice to Proceed, Seller shall, at its sole cost and expense, obtain and cause to be issued and delivered to Purchaser by a Qualified Surety a decommissioning bond ("Decommissioning Bond"), in form and substance as provided in Schedule 12 (Form of Decommissioning Bond) or as may otherwise be acceptable to Purchaser. The Decommissioning Bond shall specify that it shall be subject to and governed by Virginia law.

(b) Decommissioning Amount. The Decommissioning Bond shall have a bonded sum amount equal to no less than the Decommissioning Amount and shall be for a term of one (1) year following the date of delivery of such Bond to Purchaser. At least sixty (60) Days prior to the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th) and twenty-fifth (25th) anniversaries of the Billing Year, Seller shall, at its sole cost and expense, engage and cause a Qualified Engineer experienced in preparing decommissioning estimates of solar photovoltaic systems to (i) recalculate the Decommissioning Amount as of such particular anniversary date, and (ii) prepare and send a report with such recalculated Decommissioning Amount, including all data and calculations, to each of Purchaser and Seller. Unless Purchaser disagrees with the recalculation of such Decommissioning Amount by delivery of Notice to Seller within twenty (20) Days following receipt of such report from the Qualified Engineer, Seller shall cause the Qualified Surety to amend or replace the Decommissioning Bond with the recalculated Decommissioning Amount, as determined by the Qualified Engineer, and deliver such amended or replacement Decommissioning Bond to Purchaser within thirty (30) Days.

(c) Renewal. At least sixty (60) Days prior to the expiration of each term of such Decommissioning Bond, Seller shall cause the Decommissioning Bond to be renewed for an additional one (1) year term. Seller shall repeat such renewal process each year thereafter for the Term, and such renewal shall be through a Qualified Surety.

(d) Guaranty in Lieu of Bond. At any time, Seller shall have the option to provide or replace the Decommissioning Bond with a guaranty from an entity with an Investment Grade Credit Rating and in form and substance reasonably acceptable to Purchaser. Such guaranty shall (i) be subject to and governed by Virginia Law; (ii) guaranty an amount not less than the Decommissioning Amount, as such amount may be adjusted pursuant to Section 8.2(b) above; and (iii) shall not expire any earlier than the date that Decommissioning is completed (i.e., the System is removed from the Project Site upon expiration or earlier termination of this Agreement).

SECTION 9 INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY

9.1 Required Seller Insurance.

(a) Required Seller Insurance. Seller, on its own behalf and on behalf of anyone directly employed by it for whose acts or omissions Seller may be liable, including Subcontractors, shall secure or cause to be secured on or before the Contract Date, and maintain during and through the Term, the insurance policies with the policy limits specified in subsection (a) below (the “Required Seller Insurance”). Evidence of the Required Seller Insurance shall be provided to Purchaser promptly following receipt thereof. The administrative and premium payments and all other costs and expenses for each such policy shall be borne exclusively by Seller. Seller may also secure insurance coverages and policies in addition to the Required Seller Insurance, and all such insurance costs shall be borne exclusively by Seller at its sole cost and expense.

(b) Seller Insurance Requirements. Seller shall obtain and maintain, at its sole cost and expense, the following insurance coverages from insurers who are licensed in the State and who have a Best’s rating of A: VII or better:

(i) to the extent Seller has employees, Seller shall maintain statutory worker’s compensation and employer’s liability insurance in limits of not less than one million dollars (\$1,000,000) to protect Seller from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the State;

(ii) commercial general liability insurance having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect Seller, its Subcontractors, and the interest of Purchaser, its officers and employees, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under this Agreement or in connection with the Services; the general liability insurance shall also include broad form general liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required;

(iii) to the extent Seller operates vehicles, Seller shall maintain owned, non-owned and hired commercial automobile liability insurance having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by Seller; in addition, all mobile equipment used by Seller in connection with the Services shall be insured under either a standard

commercial automobile liability policy or a commercial general liability policy; the garage keeper's liability coverage shall also be maintained where appropriate;

(iv) Seller shall require its construction contractor to purchase builder's risk and fire and extended coverage insurance to protect Purchaser and Seller and its Subcontractors against loss caused by perils, in a minimum amount of [•]; such insurance value shall reflect any increases to the Agreement through change orders; policy to be in builder's risk completed value forms, including the following (A) policies shall be written to include the name of Seller, (B) all insurance shall be in effect on or before the date when work is to commence, and (C) all insurance shall be maintained in full force and effect until the final acceptance of the System by Purchaser; and

(v) environmental impairment liability insurance, including sudden and accidental pollution and in transit coverage as well as coverage for storage at site, having a minimum limit of liability of one million dollars (\$1,000,000) per occurrence.

(c) Insurance Requirements Generally. The following shall be applicable to the Required Seller Insurance coverages required to be secured and maintained pursuant to Section 9.1(b):

(i) Insurance Deductibles. Seller shall be responsible to (and shall) satisfy any and all deductibles and self-insured retentions contained in the Required Seller Insurance coverages required to be secured and maintained by Seller under this Agreement, as well as any excluded loss or losses, if the same are within Seller's liability under this Agreement. Notwithstanding the minimum limits of coverage stated in subsection (a) above, the limit of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage, and no individual insurance coverage shall have a deductible in excess of one hundred thousand dollars (\$100,000) without the prior express written consent of Purchaser.

(ii) Duty to Maintain Insurance. All Required Seller Insurance to be secured and maintained by Seller under this Agreement shall be continuously maintained throughout the Term. Failure of Seller (or its Subcontractor) to obtain and maintain the insurance required under and pursuant to the terms of this Agreement shall be deemed an Event of Default for purposes of Section 12.1(e). Failure of Seller (or its Subcontractor) to maintain any Required Seller Insurance shall also not relieve Seller from any liability under this Agreement, nor shall these requirements be construed to conflict with Seller's indemnification obligations. Seller shall further ensure that all Required Seller Insurance is not canceled, and that it is renewed during the Term, and Seller at its sole cost and expense shall pay such extra premium as required to ensure no lapse of Required Seller Insurance coverage for any time period. Seller is required to carry property insurance on all equipment, to include Purchaser-owned, installed, and maintained equipment used by Seller while in its care, custody, and control for the use of this Agreement.

(iii) Policies of Insurance; Certificates as Evidence of Insurance. Certificates of insurance shall be furnished to Purchaser for review and approval, and original, signed Certificates of insurance, citing the contract number and such endorsements as prescribed herein, shall be filed with the Purchaser before any work is started. Within ten (10) Business Days of request by Purchaser, Seller shall furnish copies of all certificates of insurance. If a policy of Required Seller Insurance is canceled or not renewed, Seller shall provide, or cause to be provided, a certificate for the substitute policy to Purchaser for review and approval as early as possible before the commencement of the substitute policy period. If a policy of Required Seller Insurance is renewed, Seller shall supply to Purchaser a certificate of insurance that reflects the policy number of Seller's approved policy, lists the coverages provided and shows the policy's effective and termination dates. Seller shall provide to Purchaser proof of renewed Required Seller Insurance coverages in the form of a certificate of insurance of each such policy as far in advance of the renewal as possible.

(iv) Carrier Renewal and Cancellation Notification. Any policy or policies procured, or caused to be procured, by Seller shall provide that Purchaser shall be given Notice to any non-payment of insurance premium thirty (30) Days prior to the carrier's cancellation, non-renewal, or within such other period of Days required by Applicable Law, and that such Notice shall be delivered to Purchaser as provided for in this Agreement. If any such policy is subject to expiration or cancellation and Seller fails to provide Purchaser with written commitments to renew or purchase other such insurance meeting the requirements of this Section 9.1 at least thirty (30) Days prior to the effective date of such expiration or cancellation, then Purchaser, upon Notice to Seller, shall have the right to purchase or renew such coverage and Seller shall then be obligated to reimburse Purchaser for the premiums and broker fee costs for such insurance. The failure of Seller to deliver a new and valid certificate shall result in suspension of all payments until the new certificate is furnished.

(v) Additional Insured. Purchaser, its officers and employees shall be covered as an additional insured under all Required Seller Insurance to be secured and maintained by Seller and its Subcontractors under this Section 9.1, and such insurance shall be primary with respect to the additional insured status and a severability of interest provision shall be applicable to each policy.

(vi) Liability Insurance "Claims Made" Basis. If the liability insurance purchased by Seller has been issued on a "claims made" basis, Seller shall comply with the following additional conditions. The limits of liability and the extensions to be included as provided in this Section 9.1 remain the same. Seller must either:

(A) Agree to provide certificates of insurance evidencing the coverage required in this Section 9.1 for a period of two (2) years after final payment hereunder. This certificate shall evidence a "retroactive date" no later than the beginning of Seller's or its Subcontractors' work hereunder, or a copy of the endorsement itself; or

(B) Purchase the extended reporting period endorsement for the policy or policies in force during the Term and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

(vii) Use of Insurance Proceeds. Unless the Parties otherwise agree in writing, Seller shall promptly restore the System to the condition prior to such loss, and Seller shall use all proceeds received by Seller from any policy of insurance providing coverage for such loss, to make all necessary repairs or replacements to the System and to promptly restore deliveries of Output to Purchaser.

(viii) No Exclusions; No Representation of Coverage Adequacy. Contractual and other liability insurance as required herein shall not contain a supervision, inspection or engineering services exclusion that would preclude the Purchaser from supervising and/or inspecting the System or the Project Site as to the end result. Seller shall assume all on-the-job responsibilities as to the control of persons directly employed by Seller and of the Subcontractors. Compliance by Seller and all Subcontractors with the requirements in this Section 9.1 shall not relieve Seller and the Subcontractors of the liability provisions of this Agreement. The Required Seller Insurance coverages as required in this Section 9.1 represent that amount of insurance coverage considered by Purchaser in its reasonable judgment to be proper and prudent for this Agreement, but Purchaser is not representing that the coverages and limits required will necessarily be adequate to protect Seller, and such coverages and limits shall not under any circumstances be construed nor deemed to be a limitation on Seller's liability under this Agreement.

(ix) Notwithstanding the foregoing, Seller has the option to self-insure to meet the requirements of this Section 9.1 provided Seller is owned, directly or indirectly, by an entity with an Investment Grade Credit Rating.

9.2 Indemnification.

(a) Seller shall indemnify, defend, and hold harmless Purchaser, the Board, and Purchaser's agents, officers, subcontractors, employees, invitees, and contractors (each, a "Purchaser Indemnified Party", and collectively, the "Purchaser Indemnified Parties") from and against any and all liability for violations or alleged violation of any Applicable Law (hereinafter in this Section 9.2 referred to as "liability") and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under "workers compensation laws" or any other Applicable Laws) arising in connection with, or out of, or resulting from the performance of the Services under this Agreement, if any such liability or Loss (i) is attributable to: (A) bodily injury, sickness, disease or death; (B) violation of any statutory or regulatory rule designed to protect against bodily injury, sickness, disease or death; (C) damage to or destruction of tangible property, including any diminution in value and the loss of use resulting therefrom; (D) any violation of any Applicable Law or any common law duty; or (E) any sums paid or expended by Purchaser to any Governmental Authority or the Utility as a fine, penalty or damage for any violation of any Applicable Law or any agreement; and (ii) is caused by or results from, in whole or in part, any act or omission of Seller, any tier of Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them or Purchaser may be liable. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of Purchaser Indemnified Parties, except that Seller shall not be required to defend or indemnify Purchaser Indemnified Parties for a Loss to the extent any such Loss results solely from the negligence of a Purchaser Indemnified Party.

(b) Purchaser shall promptly provide Notice to Seller of the assertion of any claim with respect to which Purchaser Indemnified Parties may be entitled to indemnification hereunder; provided, however, that any failure or delay by Purchaser in giving such Notice shall not affect Seller's indemnification obligations hereunder except to the extent of a showing by Seller of actual, substantive prejudice to its ability to satisfy such indemnification obligations. Seller shall thereafter defend the Purchaser Indemnified Parties, and may assume sole and exclusive control over the defense and settlement of any claim with respect to which the foregoing indemnity obligations apply, so long as there is not a conflict of interest in such defense; provided, however, that Seller will not enter into any settlement that adversely affects Purchaser's rights or interests, imposes any liability or obligation on Purchaser or contains any admission or acknowledgement of wrongdoing by Purchaser without Purchaser's prior written consent (which may be granted or withheld in Purchaser's sole and absolute discretion). The Purchaser Indemnified Parties shall provide reasonable cooperation to Seller in connection with the defense or settlement of any such claim. Purchaser shall be entitled to participate in the defense of any such claim at its sole cost and expense. The extent of Seller's indemnification obligations hereunder shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy processed or provided in connection with this Agreement. In any and all claims against Purchaser Indemnified Parties by any employee of Seller or Purchaser, the indemnification obligations under this Section 9.2 shall not be limited in any way as to the amount and types of damages, compensation or benefit acts or other employee benefit acts. Seller's obligations hereunder shall not be affected by Seller's use of Subcontractors, but Seller shall use commercially reasonable efforts to require each Subcontractor to indemnify Purchaser Indemnified Parties under any contract entered into by Seller with each such Subcontractor in terms similar to the indemnification provided for the benefit of Purchaser Indemnified Parties under this Section 9.2, but nothing in this Section 9.2 or otherwise in this Agreement shall ever create any direct relationship between a Subcontractor and Purchaser.

9.3 Exclusion of Certain Damages. EXCEPT FOR LIABILITY IN RESPECT OF (A) A PARTY'S INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD OR RECKLESSNESS OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF A PARTY OR

ANY AGENT OR EMPLOYEE OF A PARTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

SECTION 10 INVOICES; PAYMENTS; TAXES

10.1 General. Commencing with the first Billing Month and for each Billing Month thereafter, Purchaser shall pay to Seller the Monthly Fee for Services properly performed pursuant to the terms of this Agreement and in accordance with the calculation set forth in Section 10.2. During the period between the Contract Date and the Actual Commercial Operation Date, Seller shall receive no compensation hereunder, and no compensation shall accrue whatsoever. Seller acknowledges and agrees that its pricing and amounts payable by Purchaser hereunder takes into account any and all Services performed, including any such services performed by its Subcontractors, and all liability incurred by Seller in satisfying all obligations during the period between the Contract Date and the Actual Commercial Operation Date. Unless otherwise expressly set forth herein, the Monthly Fee set forth in Section 10.2 shall be the sole and exclusive compensation to be paid to Seller for the Services.

10.2 Monthly Fee. The monthly fee (the “Monthly Fee”) shall be calculated as follows:

$$\text{Monthly Fee} = O \times \text{CP} \text{ } -/+ \text{ } \text{ADJ}$$

Where:

O = Total Output (in kWh) during the relevant Billing Month delivered to Purchaser

CP = Contract Price (in \$/kWh) for the particular Billing Year as set forth on Schedule 5 (Contract Price)

ADJ = Adjustments (Section 10.5)

10.3 Monthly Invoices. Seller shall submit its invoice to Purchaser for payment of the Monthly Fee on or after the end of the Billing Month for which payment is requested. In preparing its invoice, Purchaser shall use and comply with the form and content of the invoice attached hereto as Schedule 9 (Form of Monthly Invoice) and as otherwise required by the terms of this Agreement. The Parties may, by mutual agreement, revise the form and content of such invoice form. Seller shall attach all documentation and information necessary, and as otherwise required by this Agreement, to justify payment by Purchaser to Seller or credit from Seller to Purchaser.

10.4 Payment. Purchaser shall pay Seller the Monthly Fee due and owing to Seller and invoiced by Seller pursuant to Section 10.3, within thirty (30) Days after the date of the receipt by Purchaser of a properly formatted and completed invoice, consistent with Schedule 9 (Form of Monthly Invoice) containing the required documentation and free of errors. If the due date for payment is not a Business Day, payment is due on the next Business Day following the due date. If Purchaser fails to remit the full amount payable when due, after taking into account the foregoing in this Section 10.4 and other applicable

provisions of this Agreement, interest on the unpaid portion that is due and owing at such time shall accrue at the Interest Rate.

10.5 Adjustments. The adjustments to the Monthly Fee are as follows: (a) the Monthly Fee shall be reduced by the Shortfall Damages, if any, payable by Seller to Purchaser in accordance with Section 6.5(c), (b) the Monthly Fee shall be increased or decreased, as applicable, in accordance with Section 6.4(c)(iv), and (c) the Monthly Fee shall be reduced by any other provision of this Agreement which expressly permits reduction of, or deduction to, the Monthly Fee.

10.6 Taxes. Seller shall be responsible for and pay all taxes assessed and imposed on the generation, sale, delivery or consumption of Output generated by the System, including all income taxes or similar taxes, and all personal property or other taxes imposed on the System. If Purchaser is required by Applicable Law to remit or pay taxes that are Seller's responsibility hereunder, Purchaser may deduct such amounts from payment to Seller hereunder; if Purchaser elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Purchaser for such amounts upon request.

10.7 Right of Setoff. In addition to any right now or hereafter granted under Applicable Law and not by way of limitation of any such rights, either Party shall have the right at any time or from time to time, following Notice to the other Party, to set off against any amounts due by the other Party hereunder, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by such other Party hereunder.

SECTION 11

FORCE MAJEURE EVENT; CHANGE IN LAW

11.1 Force Majeure Event.

(a) Either Party shall be excused from performance of its applicable obligations under this Agreement to the extent it is prevented or, individually, or in the aggregate, materially delayed from performing such obligation due to the occurrence of a Force Majeure Event, and such inability to perform or delay in performance due to a Force Majeure Event shall not constitute a Seller Event of Default, a Purchaser Event of Default or cause for any liability under this Agreement, except as specifically provided in this Agreement.

(b) If either Party claims the occurrence of a Force Majeure Event as a basis for not performing its obligations under this Agreement, then the Party making such claim shall (i) promptly upon discovery thereof, provide verbal notice thereof followed within twenty-four (24) hours thereafter, by Notice, to the other Party of the occurrence of the Force Majeure Event, (ii) provide an estimate of its expected duration, (iii) describe in reasonable detail its probable effect on the performance of its obligations hereunder, (iv) exercise all reasonable efforts to continue to perform its obligations hereunder to the extent not prevented by the Force Majeure Event, (v) expeditiously take action to cure the Force Majeure Event, and provide at least weekly, verbal or written updates and monthly progress reports to the other Party relative to achieving a cure, (vi) exercise all reasonable efforts to mitigate or limit damages to the other Party, and (vii) provide prompt verbal notice, and within twenty-four (24) hours thereafter, Notice to the other Party of the cessation of the Force Majeure Event which gave rise to its inability to perform.

(c) Delay caused by a Force Majeure Event shall extend the Project Schedule (including the Expected Commercial Operation Date) on a Day-for-Day basis, or as mutually agreed by the Parties.

11.2 Change in Law.

(a) Change in Law Notice. If either Party determines that a Change in Law has occurred or is reasonably likely to occur, then such Party may deliver Notice to the other Party of such Change in Law. Within sixty (60) Days following receipt of such Notice, the Parties shall meet and attempt in good faith to negotiate an amendment to this Agreement as is 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 either Party may terminate this Agreement in accordance with Section 12.5(c).

(b) Illegality or Impossibility. If a Change in Law renders this Agreement, or either Party's performance or obligations pursuant to this Agreement either illegal or impossible, then the affected Party may terminate this Agreement immediately upon Notice to other Party. In the event of termination pursuant to this Section 11.2(b), neither Party shall be liable for any payment, damages or penalty as a result of such termination, except with respect to liabilities accrued prior to the date of termination.

SECTION 12

EVENTS OF DEFAULT; TERMINATION

12.1 Seller Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default of Seller ("Seller Event of Default"):

(a) The Actual Commercial Operation Date has not occurred by the Expected Commercial Operation Date unless such failure is caused by a Force Majeure Event or Purchaser Event of Default;

(b) The failure by Seller to perform any material obligations under this Agreement, unless such failure is caused by a Force Majeure Event or Purchaser Event of Default; provided, however, such failure continues for ninety (90) Business Days (or such additional reasonable period of time if the claimed default cannot be substantially cured through reasonable efforts) after Purchaser shall have given Notice demanding such failure to perform be cured;

(c) Any material uncured Lessee Default (as defined in the Lease) under the Lease;

(d) Gross negligence, fraud, or willful misconduct by Seller in connection with this Agreement;

(e) The failure to obtain or maintain the Required Seller Insurance, all pursuant to Section 9.1;

(f) Seller 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);

(g) Any representation or warranty of Seller hereunder proves to be false or misleading in any material respect;

(h) The failure or refusal of Seller to establish, obtain, maintain, or renew (including to amend or replace the Decommissioning Bond with the updated Decommissioning Amount) in a timely manner the Decommissioning Bond in accordance with Section 8.2;

(i) Following the Actual Commercial Operation Date, failure to meet or achieve the Output Guarantee for the relevant Billing Year during three (3) or more consecutive Billing Years; or

(j) Seller abandons the System or discontinues its Services, other than pursuant to its right to suspend performance due to a Force Majeure Event in accordance with Section 11.1.

12.2 Purchaser Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default of Purchaser (“Purchaser Event of Default”):

(a) The failure by Purchaser to perform any material obligations under this Agreement, unless such failure is caused by a Force Majeure Event or Seller Event of Default; provided, however, such failure continues for ninety (90) Business Days (or such additional reasonable period of time if the claimed default cannot be substantially cured through reasonable efforts) after Seller shall have given Notice demanding that such failure to perform be cured; or

(b) Failure of Purchaser to pay undisputed amounts due and owing to Seller under this Agreement in accordance with the applicable timeframes specified in this Agreement; provided, however, Seller shall have given Notice of any such non-payment to Purchaser after the due date and at least thirty (30) Business Days before Seller exercises its rights under this Section 12.2(b).

12.3 Remedies upon Event of Default. Upon the occurrence of an Event of Default by the Defaulting Party (after any applicable cure period), the Non-Defaulting Party shall have the following rights: (a) to terminate this Agreement by Notice to the Defaulting Party, (b) to suspend performance of its obligations and duties hereunder upon Notice to the Defaulting Party, and (c) to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity.

12.4 Damages Upon Termination by Event of Default. Upon a termination of this Agreement pursuant to Section 12.3, the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “Termination Payment”):

(a) Termination by Purchaser. If Purchaser terminates this Agreement for a Seller Event of Default, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of Purchaser’s direct damages for the cost of cover to the extent it exceeds the Contract Price for the remainder of the Term; (ii) all direct costs incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 12.4(a) cannot be less than zero.

(b) Termination by Seller. If Seller terminates this Agreement for a Purchaser Event of Default, the Termination Payment payable to Seller shall be equal to the sum of (i) the Fair Market Value of the System, as determined pursuant to Section 7.4(b) and (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. If this Agreement is terminated for a Purchaser Event of Default, Seller may, at its discretion, relocate the System to a new site at Purchaser’s reasonable expense (the “Relocation Expense”), and enter into a new contract with a new party for the sale of electricity, and if such relocation and contract is entered into within ninety (90) days of termination of this Agreement, the Termination Payment owed by Purchaser pursuant to this Section 12.4(b) shall be reduced to account for (A) the net present value of payments that are expected to be received under the new contract, and (B) the mitigation of, or reduction in, any Loss of Tax Benefits as a result of such relocation (together, the amount in clauses (A) and (B), the “Mitigation Offset”); provided, however, in no event shall the amount of the Relocation Expense exceed the Mitigation Offset. In the event Seller chooses not to undertake such relocation and new contract does not occur within ninety (90) days of termination of this Agreement, title and ownership of the System and the associated property shall transfer to Purchaser “as is,

where is, with all faults” in accordance with Section 7.4(c) at no additional cost or expense of Purchaser (other than payment of the Termination Payment in accordance with this Section 12.4(b)), unless Purchaser elects, in its sole discretion, not to acquire ownership of the System, whereupon Seller shall remove the System in accordance with Section 8.1. Any payment made under this Section 12.4(b) shall be increased by an amount such that, after imposition of federal corporate income taxes on such payment, the result is a net payment that would have been made if no such taxes were imposed on the payment.

12.5 Other Termination.

(a) Termination Due to Lack of PPA Pilot Program Capacity. This Agreement may be terminated immediately by either Party upon Notice to the other Party if no capacity exists for the System under the PPA Pilot Program Requirements. In the event of termination pursuant to this Section 12.5(a), neither Party shall be liable for any payment, damages, or penalty as a result of such termination.

(b) Termination Due to Force Majeure Event.

(i) If a Force Majeure Event shall occur relative to a material obligation of either Party, and such Force Majeure Event or the effect thereof prevents or is reasonably anticipated to prevent the performance of such obligation for a period of one hundred eighty (180) Days or more, the affected Party, upon Notice to the other Party, may, in the affected Party’s sole discretion, terminate this Agreement forthwith without payment, damage or penalty as a result of such termination and the Parties hereby waive any right to any such damage, penalty, or payment.

(ii) Purchaser may terminate this Agreement upon Notice to Seller if (A) a Force Majeure Event occurs that diminishes the production of the System by more than fifty (50%) of the Annual Contract Quantity for a period of twelve (12) consecutive months, or (B) the System is rendered inoperable and a Qualified Engineer that is mutually acceptable to both Parties determines that the System cannot be repaired or replaced within a period not to exceed twenty-four (24) months following the date of the occurrence of the Force Majeure Event.

(iii) Upon termination under this Section 12.5(b)(i) or (ii), neither Party shall be obligated to the other for the payment of any costs or expenses, except that Purchaser shall be obligated to pay Seller the Monthly Fee(s) that have accrued through the date of such termination but have not been paid.

(c) Termination Due to Change in Law. If a Change in Law shall occur and the Parties are unable to mutually agree upon amendments to this Agreement in accordance with Section 11.2(a), then either Party may, upon at least thirty (30) Days prior Notice to the other Party, terminate this Agreement. In the event of termination pursuant to this Section 12.5(c), neither Party shall be liable for any payment, damages or penalty as a result of such termination, except with respect to liabilities accrued hereunder prior to the date of termination.

(d) Termination for Convenience. Following the Installation Notice to Proceed, Purchaser may, in its sole discretion, terminate this Agreement at Purchaser’s convenience. If Purchaser elects to terminate this Agreement for its convenience, Purchaser shall provide Seller Notice of such determination and the termination date shall be ninety (90) Days following Purchaser’s delivery of such Notice to Seller. The Parties shall continue to perform their respective obligations during such ninety (90) Day period. If Purchaser terminates this Agreement pursuant to this Section 12.5(d), Purchaser shall be obligated to pay to Seller, as the sole and exclusive remedy of Seller, (i) if Purchaser elects to have Seller remove the System, the reasonably incurred actual costs of Decommissioning, if any, subject to Cost Substantiation, plus (ii) the Fair Market Value of the System, as determined by appraisal in accordance with

Section 7.4(b). If this Agreement is terminated pursuant to this Section 12.5(d), title and ownership of the System and the associated property shall transfer to Purchaser pursuant to Section 7.4(c) at no additional cost or expense of Purchaser (other than payments described in accordance with this Section 12.5(d)), unless Purchaser elects, in its sole discretion, not to acquire ownership of the System, whereupon Seller shall remove the System in accordance with Section 8.1.

(e) Termination for Fiscal Non-Funding. In the event sufficient funds shall not be appropriated which may lawfully be applied to the payment of Purchaser's obligations under this Agreement, Purchaser's rights and obligations under this Agreement shall terminate on the last Day of the last Fiscal Year for which an appropriation is available, or on such earlier date on which a payment is due for which sufficient funds for payment have not been lawfully appropriated, and Purchaser shall not be obligated to make payments under this Agreement beyond the last date for which such an appropriation is available. Not later than thirty (30) Days after Purchaser has knowledge that an appropriation will not be available, Purchaser shall deliver Notice to Seller of such termination, but the failure to give such Notice shall not operate to continue or keep in effect this Agreement beyond the termination date set forth in the preceding sentence or the obligations to make payments under this Agreement beyond the Fiscal Year for which an appropriation is available.

12.6 Obligations Following Termination. If a Party terminates this Agreement pursuant to this Section 12 for default of the other Party, then following such termination, Seller shall remove all equipment constituting the System in compliance with Section 8.1 at the sole cost and expense of the Defaulting Party.

12.7 Duty to Mitigate. Each Party shall mitigate damages and covenants that it will use reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

12.8 System Relocation. If Purchaser ceases to conduct activities or operations at the Project Site or vacates the Project Site, or Purchaser is otherwise unable to continue to host the System at the Project Site or accept the Output delivered by the System for any other reason (other than as a result of a Seller Event of Default, Force Majeure Event or Change in Law), Purchaser may propose in writing to Seller the relocation of the System in lieu of termination of the Agreement. Following Seller's receipt of such Notice, the Parties shall negotiate in good faith an agreement for the relocation of the System to a different site. If the Parties reach agreement on the relocation of the System, Purchaser shall be obligated to pay for the reasonable costs incurred by Seller, subject to Cost Substantiation, in relocating the System and installation and testing of the System at such new project site, and Purchaser shall not be liable for any other damage, penalty or payment hereunder. 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 and Purchaser is the Defaulting Party, Seller may terminate this Agreement pursuant to Section 12.3.

SECTION 13 REPRESENTATIONS AND WARRANTIES

13.1 Seller Representations and Warranties. Seller represents and warrants to Purchaser as follows:

(a) Existence and Qualification. Seller is duly organized, validly existing and in good standing in its jurisdiction of formation and is qualified to do business in the State and is in good standing therein. Seller is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) Power; Authorization. Seller has the full power, authority, and legal right to enter into and perform its obligations set forth herein, and the execution, delivery and performance by Seller, (i) have been duly authorized, (ii) do not require the approval of any Governmental Authority, other than those Permits or approvals required or contemplated to be obtained after the Contract Date and prior to the Actual Commercial Operation Date, (iii) will not violate any judgment, order, law, or regulation applicable to Seller or any provision of Seller's organizational documents, and (iv) do not constitute a default under or result in the creation of any Lien upon any assets of Seller under any agreement or instrument upon which Seller is a party or by which Seller or its assets may be bound or affected.

(c) Enforceability. This Agreement constitutes a legal, valid, and binding obligation of Seller, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.

(d) Compliance with Laws. Seller is in compliance with all Applicable Laws in all material respects.

(e) No Conflict. Seller's performance of its obligations under this Agreement and the transactions contemplated hereby do not conflict with Seller's performance under any other agreements or instruments to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates or its or their assets may be bound or affected. Seller has no obligation or indebtedness that would materially impair its ability to fulfill the terms of this Agreement.

(f) Intellectual Property Rights. Seller (i) owns or is licensed or is otherwise lawfully permitted to use any and all of the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property relating to the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing, repair and the performance of the Services, and (ii) the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing, repair, and performance of the Services will not infringe on the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property of any third party.

(g) Knowledge and Experience. Seller has such knowledge and experience in financial and business matters, specifically the business of providing designing, financing, installing, constructing, interconnecting, owning, operating and maintaining solar photovoltaic systems, in order to provide the Services to Purchaser as contemplated in this Agreement.

(h) Information Supplied by Seller. All information supplied and all representations and warranties made by Seller and its Affiliates in all submittals made in response to the RFP and in all post-proposal submittals with respect to Seller, its Affiliates or the Services are true, correct, and complete in all material respects.

(i) RFP. Seller has met, during the RFP procurement process period and through the Contract Date, all of the minimum qualification criteria set forth in the RFP.

(j) Litigation. There is no litigation pending or, to the knowledge of Seller, threatened, which questions this Agreement or which affects or may affect the transactions contemplated hereby.

(k) No Gratuities. Neither Seller, nor any of its Affiliates, has, directly or indirectly, offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Purchaser Board

member or Purchaser employee with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

13.2 Continuing Accuracy of Seller Representations and Warranties. During the Term, Seller shall not take any action or fail to perform any act that results in a representation and warranty made in Section 13.1 or elsewhere in this Agreement becoming untrue. Seller shall promptly send Notice to Purchaser if any such representation or warranty becomes untrue. From time to time, Seller shall provide to Purchaser, upon Purchaser's request, written certification of the continuing accuracy of all representations and warranties in Section 13.1.

13.3 Purchaser Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) Power and Authority. Purchaser has the full power, authority, and legal right to enter into and perform its obligations set forth herein.

(b) Enforceability. This Agreement constitutes a legal, valid, and binding obligation of Purchaser, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.

SECTION 14 MISCELLANEOUS

14.1 Governing Law. The law of the Commonwealth of Virginia shall govern the validity, interpretation, construction and performance of this Agreement, including the Parties' obligation under this Agreement, the performance due from each Party under it and the remedies available to each Party for breach of it. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the State that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply.

14.2 Assignment.

(a) General. This Agreement shall not be assigned or otherwise transferred by either Party without the prior written consent of the other Party; which shall not be unreasonably withheld, conditioned, or delayed, provided, however, Purchaser may, without the prior written consent of Seller, assign this Agreement to a validly constituted agency or authority of the State, a duly created municipal corporation or authority or similar entity created by Purchaser or by State legislation and, if such assignee is also being assigned the right, title and interest in and to the Project Site, such assignee also takes assignment of Purchaser's obligations under the Lease. In the event Seller requests Purchaser's consent to an assignment of this Agreement, Seller shall deliver to Purchaser the proposed assignee's organizational documents, including articles or certificate of organization, formation or incorporation, operating agreement, bylaws and Form W-9, and such other information and documentation requested by Purchaser. In no case shall any assignment relieve, release or discharge the Contract Awardee from its obligations, duties and liabilities or change the terms of this Agreement. Except as expressly permitted herein, any other assignment of this Agreement by either Party without the express written consent of the other Party shall be null and void at inception.

(b) Financing Assignment.

(i) Seller, with the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned, or delayed, may grant a security interest in its rights and obligations under this Agreement to any Financing Party as security for any loan or other investment (in the form of debt, equity, lease financing or otherwise) made to Seller; provided, that no such grant shall relieve Seller of any of its duties, responsibilities, or obligations hereunder. In connection with a request for a financing assignment, Seller shall provide Notice to Purchaser of the name, address, telephone number and email address of any Financing Party to which Seller intends to assign its interest hereunder. Such Notice shall include the name of the Financing Party to whom all written and telephonic communications may be addressed. Seller shall promptly give Purchaser Notice of any change in the information provided in the initial Notice or any revised Notice.

(ii) If such financing assignment is approved by Purchaser under Section 14.2(b)(i), the following provisions shall apply:

(A) Financing Party shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a Seller Event of Default, and such act performed by Financing Party shall be as effective to prevent or cure a default as if done by Seller.

(B) Promptly following the receipt of a written request from Seller or any Financing Party, Purchaser shall execute or arrange for the delivery of such certificates, consents and other documents as may be reasonably requested and necessary for Seller to consummate any financing or refinancing and will enter into reasonable agreements, in each case in a form customarily used in such transactions and approved by the Fairfax County Attorney's Office, with such Financing Party that provide that Purchaser recognizes the rights of such Financing Party upon foreclosure of Financing Party's security interest and such other provisions as may be reasonably requested by any such Financing Party; provided, however, that any such consent or agreement shall not constitute an amendment or modification of this Agreement or the Lease unless Purchaser otherwise agrees in writing, in its sole discretion; and provided, further, that such consent or agreement does not adversely affect, or is not reasonably likely to adversely affect, any of Purchaser's rights, benefits, risks and/or obligations under this Agreement.

14.3 Change of Control. Seller shall provide Notice to Purchaser not less than forty-five (45) Days prior to any proposed Change of Control of Seller, and no such Change of Control shall be consummated without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned, or delayed, and any such action without Purchaser's prior written approval shall be null and void at inception and of no force and effect.

14.4 Authority of Purchasing Agent. Seller acknowledges and agrees that County's Purchasing Agent or his or her duly authorized representative or agent has the sole responsibility and authority to execute this Agreement and any amendment or modification hereto on behalf of Purchaser. Any execution, amendment or modification of this Agreement by a Person other than the County's Purchasing Agent or his or her duly authorized representative or agent shall be null and void and of no force and effect.

14.5 Dispute Resolution.

(a) County Purchasing Resolution. All claims, disputes, controversies, causes of action and other matters involving a question of fact between the Parties arising out of or relating to this Agreement (collectively or individually, the "Dispute") which is not disposed of by the applicable terms of this Agreement shall be decided by the County Purchasing Agent, who shall reduce his or her decision to writing and mail or otherwise forward a copy thereof to Seller within ninety (90) Days. The decision of the County Purchasing Agent shall be final and conclusive unless Seller appeals within six (6) months of the

date of the final written decision by instituting legal action as provided in the Code of Virginia. Seller may not institute legal action prior to receipt of the County Purchasing Agent's decision on the Dispute, unless the County Purchasing Agent fails to render such decision within the time specified. Seller shall not institute any legal action until all statutory requirements have been met.

(b) Technical Disputes. If a Dispute primarily involves a technical or engineering issue and the Parties desire to attempt to resolve such Dispute by a Qualified Engineer prior to submitting a Dispute pursuant to Section 14.5(a), then the Parties may agree to refer such Dispute to a Qualified Engineer skilled in the particular discipline that is the matter of controversy. If the Parties desire to refer the matter to a Qualified Engineer, the Parties shall meet to mutually select and agree in writing on a Qualified Engineer to hear and to render a determination on such matter. The selected Qualified Engineer shall be given written notice of such selection by the Parties and the Parties shall secure its agreement to serve as the Qualified Engineer for such matter. Within ten (10) Business Days after the selection and engagement of the Qualified Engineer, the Parties shall each provide to the Qualified Engineer written notice stating in detail the contested matter and such Party's basis for its position. Within five (5) Business Days thereafter, the Parties shall meet with the Qualified Engineer to resolve the Dispute. Within ten (10) Business Days after such meeting or as soon thereafter as possible, the Qualified Engineer shall decide the Dispute and issue a written memorandum decision to the Parties. Such decision shall be non-binding and either Party may submit such Dispute for resolution in accordance with Section 14.5(a). The Qualified Engineer's costs and expenses shall be shared equally by the Parties.

(c) Venue. Any and all Disputes arising out of or in connection with this Agreement or any performance hereunder, shall be brought in the Circuit Court of Fairfax County, Virginia or in the United States District Court, Eastern District of Virginia, Alexandria Division.

14.6 Notices. All Notices and consents required or permitted by this Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with Notice deemed to be given upon receipt; postage prepaid, (b) delivered by hand or by nationally recognized courier service, or (c) electronic mail or other electronic communication system acceptable to the Representatives with confirmed receipt thereof, and in all cases, addressed as follows:

If to Purchaser:

With a copy to (which shall not constitute Notice):

If to Seller:

With a copy to (which shall not constitute Notice):

14.7 Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees.

14.8 Survivability. Any term, condition, covenant or obligation that requires performance by a Party subsequent to termination or expiration of this Agreement, whether specifically identified herein or not, shall remain enforceable against such Party subsequent to such termination or expiration.

14.9 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

14.10 Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be reasonably necessary, reasonably requested or required by the other Party that are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full effect to this Agreement and to carry out the intent of this Agreement.

14.11 Waivers. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by Applicable Law may be exercised from time-to-time and as often as may be deemed expedient by the Parties. Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by a written instrument signed by a duly authorized officer of the Party against whom enforcement of such change, modification, amendment, or waiver is sought. If any representation, warranty, or covenant contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

14.12 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 under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System and restore the Project Site in accordance with Section 8.

14.13 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.

14.14 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent, employee, or legal representative of the other Party or to create any fiduciary relationship between the Parties. In addition, nothing in this Agreement shall be deemed or construed as creating any contractual relationship between any Subcontractor and Purchaser. The Parties agree that Seller shall be fully responsible for the acts and omissions of any Subcontractor.

The Parties agree that Seller has entered in this Agreement and shall be performing the services contemplated herein as an independent contractor. As an independent contractor, Seller, including its Subcontractors, is solely responsible for the means, methods, techniques, sequences, procedures, and schedules used to perform the Services. Seller has the sole right to control and direct the means, manner, and methods by which the obligations of this Agreement are satisfied. In furtherance of such right and obligation, Seller shall be responsible for the Services and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the Services. Seller assumes all risk of direct and indirect damage or injury, or both, to the property of Persons used or employed on or in connection with the Services, and all damage or injury to any Person or property wherever located, resulting from any action or omission by Seller under this Agreement.

Nothing in this Agreement may be interpreted to mean Purchaser may exercise control over how services are provided by Seller nor how Seller satisfied its obligations under this Agreement. Except as expressly set forth herein, nothing in this Agreement may be interpreted to give the appearance that either Party possesses the apparent or actual authority to act or speak for the other Party and neither Party shall by words, acts, or representations convey to the general public, any Person or any Governmental Authority the impression that such Party has the authority to speak or act for the other Party. If any Person believes that either Party has the necessary power to bind such other Party or believes that either Party has the power to control how services are provided by the other Party, such first Party shall take all reasonable actions as are necessary to correct the erroneous inferences and prevent reliance on such a mistake of fact.

14.15 Authorized Representatives. The Representative of Purchaser for purposes of this Agreement shall be set forth on Schedule 13 (Representatives) or his or her designee (the "Purchaser's Representative"). The Representative of Seller for purposes of this Agreement shall be set forth on Schedule 13 (Representatives) or his or her designee (the "Seller's Representative"). Either Party may change its Representative upon five (5) Business Days prior Notice to the other Party. The Representatives shall give each other Notice of the appointment of any designee authorized to act on such Representative's behalf, if any. The Representatives may change their designee upon five (5) Business Days prior Notice to the other.

Subject to the following in this paragraph, the respective Representatives are empowered to consult with and to make day-to-day decisions binding on their respective Parties within the confines of this Agreement and to perform such other activities as are expressly recognized and granted pursuant to the terms of this Agreement. Notices or other communications referenced in this Agreement from one Party to the other shall be effective only if delivered to such Party's Representative. Neither Representative shall be empowered to (a) change, amend, extend, waive or otherwise modify any right or obligation of its Party under this Agreement, (b) incur costs, expenses, fees or payments for additional work or services beyond the applicable Party's day-to-day work and services prescribed under this Agreement, or (c) amend or change this Agreement in any way.

14.16 Goodwill and Publicity. Seller may not (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 Purchaser or the County in any promotional, advertising, or other material without the prior written consent of Purchaser. 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. Seller shall not place any signage on or at the Project Site (other than as required by Applicable Law) unless approved in advance in writing by Purchaser.

14.17 Entire Agreement. This Agreement, the recitals herein, together with the Schedules attached to this Agreement constitutes the entire and complete agreement and commitment of the Parties with respect to this Agreement. All prior or contemporaneous understandings, arrangements, negotiations or commitments, or any or all of the foregoing with respect to this Agreement, whether oral or written, have been superseded by this Agreement.

14.18 Amendments. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by an authorized person of each Party, which, in the case of Purchaser, shall be by [County Purchasing Agent], or his or her duly authorized representative or agent, consistent with Section 14.4.

14.19 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.

14.20 Headings. Captions and headings in this Agreement are for convenience of reference only and do not constitute a part of this Agreement.

14.21 Signatures and Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. The delivery of an executed counterpart of this Agreement by electronic transmission shall be deemed to be valid delivery thereof. Scanned or digital signatures shall be deemed valid as original as related to this Agreement.

14.22 Severability. If any provision, portion or application of this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other terms of this Agreement, as so amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.

14.23 Interest on Payments. All payments to be made pursuant to this Agreement outstanding after the applicable due date shall, commencing after such date until paid, bear interest at the Interest Rate, which rate, the Parties agree, shall be equally applicable to both Parties' late payment obligations.

14.24 Payment Disputes. If any Party shall dispute an amount owing to the other Party, such Party shall:

(a) Give Notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and shall be delivered on or before the due date of the amount disputed; and

(b) Pay all undisputed amounts by the due date. Interest at the rate specified in Section 14.23 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party

which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

(c) The remedies for disputes over payment are exclusively limited to those provided in this Agreement.

14.25 Liability of Officers and Employees. No member of the Board nor any director, officer, agent, consultant, representative, or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, because of either Party's execution or attempted execution of this Agreement or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

14.26 Pledge of Credit. Seller shall not pledge Purchaser's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. This Agreement shall not constitute a pledge of the full faith and credit of Purchaser in violation of Section 10 of Article X of the Constitution of Virginia or a bond or debt of Purchaser within the meaning of Section 10 of Article VII of the Constitution of Virginia. For the avoidance of doubt, Seller acknowledges and agrees that all of the payment obligations of Purchaser in this Agreement are expressly conditioned upon Purchaser's receipt of Services rendered by Seller.

14.27 No Conflict of Interest. Seller shall not enter into any agreements that would conflict with Seller's performance of its obligations under this Agreement, or the other transactions contemplated herein, without receiving prior written authorization from Purchaser.

14.28 Intellectual Property; Protection of County-Owned Property. Seller shall: (a) save Purchaser, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of this Agreement for which Seller is not the patentee, assignee, licensee, or owner; and (b) protect Purchaser from loss or damage to Purchaser and County-owned property while it is in the custody of Seller.

14.29 Authorization to Conduct Business in the State. At all times during the Term, Seller shall be authorized to transact business in the State as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. Seller shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50 of the Code of Virginia, as amended, to be revoked or cancelled at any time during the Term.

14.30 Covenant Against Contingent Fees. Seller warrants that no Person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Seller for the purpose of securing business. For violation of this warranty, Purchaser shall have the right to terminate or suspend this Agreement without liability to Purchaser or in its discretion to deduct from the Monthly Fee or other amounts payable to Seller under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14.31 Ineligibility. Any Person or firm suspended or debarred from participation in any County procurement shall be notified in writing by County Purchasing Agent, in accordance with the Fairfax County Purchasing Resolution.

14.32 Notice of Certain Applicable Laws. While Seller acknowledges and agrees that it must comply with all Applicable Laws as specified in Section 3.2, certain Applicable Laws require that certain Applicable Laws or provisions therefrom be specified in contracts that Purchaser may enter into, including this Agreement. The list of such Applicable Laws include, in some cases, certain obligations or procedures, or both, with respect to the same. To the extent an Applicable Law is not specifically identified below, such failure to so list shall not relieve Seller from having to comply with such unidentified Applicable Law, it nevertheless being Seller's obligation to comply with all Applicable Laws.

14.33 Statutory Provisions.

(a) Non-Discrimination. During the performance of this Agreement, Seller agrees as follows:

(i) Seller shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Seller. Seller shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Seller, in all solicitation or advertisements for employees placed by or on behalf of Seller, will state that such contractor is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose meeting the requirements of this Section 14.33(a).

(iv) Seller shall include the provisions of Section 14.33(a) in every subcontract or purchase order (specific to the System) of over Fifty Thousand Dollars (\$50,000), so that the provisions will be binding upon each Subcontractor or vendor.

(b) Drug Free Workplace. During the performance of this Agreement, Seller agrees (i) to provide a drug-free workplace for Seller's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Seller's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Seller that Seller maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order (specific to the System) of over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor. For purposes of this Section 14.33(b), "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

(c) Americans with Disabilities Act Requirements. Purchaser is fully committed to the federal Americans with Disabilities Act ("ADA"), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Purchaser's contractors, subcontractors, vendors and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement, including this

Agreement, must make the same commitment. Acceptance of this Agreement by Seller acknowledges Seller's commitment and compliance with the ADA.

(d) Immigration Reform and Control Act. Seller represents and warrants to Purchaser that it does not, and Seller covenants that it shall not during the performance of the Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

(e) VFOIA Requirements. All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act ("VFOIA"), except as otherwise provided by Applicable Law. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction, shall not be subject to the VFOIA; however, the bidder, offeror, or contractor shall (i) invoke the protections of this Section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected and (iii) state the reasons why protection is necessary. The Parties acknowledge and agree that the terms of this Agreement shall be subject to disclosure under the VFOIA. Seller accepts and agrees that any information that it submits to Purchaser pursuant to this Agreement shall be subject to the VFOIA, except as otherwise provided by Applicable Law; in which case such information may be excluded from the mandatory disclosure provisions of the VFOIA if Seller identifies and properly invokes a VFOIA exclusion in writing prior to the submission of such information to Purchaser.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name by a duly-authorized person as of the date set forth above.

SELLER:

SUN TRIBE SOLAR, LLC
a Virginia Limited Liability Company

By: _____
Name: _____
Title: _____

PURCHASER:

[•]

By: _____
Name: _____
Title: _____

SCHEDULE 1

DEFINITIONS

“Actual Commercial Operation Date” means the commercial operation date established in the Final Completion Certificate executed by the Parties pursuant to Section 5.10(d).

“ADA” has the meaning specified in Section 14.33(c).

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct all of the policies or operations of such Person.

“Agreement” has the meaning set forth in the opening paragraph of this Solar Power Purchase Agreement identifying the Parties hereto.

“Annual Contract Quantity” means, for the particular Billing Year, the pre-weather adjusted estimated amount of expected Output (in kWh) for the System as set forth in the “Annual Contract Quantity” column on Schedule 6.

“Annual Performance Guarantee Statement” has the meaning specified in Section 6.5(b).

“Applicable Law(s)” means any law, regulation, requirement or order of any federal, state or local agency, court or other governmental body, applicable from time to time to the procurement, design, installation, interconnection, equipping, testing, start-up, commissioning, financing, ownership, possession, operation or maintenance of the System or the performance of any obligations under any agreement entered into in connection therewith.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Actual Commercial Operation Date and end at the end of the last Day of the month in which such Actual Commercial Operation Date occurs and (b) the last Billing Month shall end concurrently with the end of the Term.

“Billing Year” means a Fiscal Year comprised of twelve (12) Billing Months, except that (a) the first Billing Year shall commence on the Actual Commercial Operation Date and end on the immediately succeeding June 30, and (b) the last Billing Year shall end concurrently with the end of the Term, or as applicable, the date of termination or expiration of this Agreement.

“Board” means [•], which is the governing body of Purchaser.

“Business Day” means any Day other than a Saturday, Sunday or a Day on which Purchaser is not open for normal operations.

“Change in Law” means either (a) the enactment, adoption, promulgation, modification, or repeal, after the Contract Date, of any Applicable Law, (b) the imposition, after the Contract Date, of any material conditions on the issuance, modification, or renewal of any Permit, or (c) Purchaser changes conditions or requirements at the Project Site in a manner that changes Seller’s costs to comply with Applicable Law or

any Permits, that, in the case of either (a), (b) or (c), (i) materially and adversely affects Seller's performance of the Services, (ii) materially increases Seller's costs to perform the Services, (iii) materially and adversely affects Seller's performance of its obligations hereunder, or (iv) materially and adversely affects Purchaser's performance of its obligations hereunder, by establishing, in the case of (i), (ii), (iii) or (iv) requirements that are more burdensome than the most stringent requirements in effect on the Contract Date. The following shall not constitute a "Change in Law": (1) the enactment into law, or any change in, after the Contract Date of, any federal, State, or local tax law, (2) any change, modification or elimination of any of the Tax Benefits, (3) any change after the Contract Date in any Applicable Laws regarding duties, fees, charges, levies, assessments, rates, or similar impositions of Governmental Authorities, or (4) any change that results wholly or partially from the act or omission of the Party or Affiliates of the Party claiming the Change in Law, or the affected Party's or its Affiliates' noncompliance with any Applicable Laws.

"Change of Control" shall be deemed to have occurred if: (a) any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity or Person, or any syndicate or group acquires securities of Seller representing fifty percent (50%) or more of the combined voting power of Seller's then outstanding securities entitled to vote; (b) there occurs a transaction with respect to which the stockholders, managers, members, partners or owners of Seller immediately prior to such transaction do not, immediately after the transaction, own or control more than fifty percent (50%) of the combined voting power of Seller then outstanding securities entitled to vote; or (c) all or substantially all of the assets of Seller are sold, liquidated or distributed.

"Chapter 382" has the meaning set forth in the Recitals to this Agreement.

"Codes and Standards" means those applicable technical or numerical codes and standards referenced in this Agreement, those applicable codes and standards of technical societies, organizations or associations and all applicable provisions of all national, state, or local established rules, including those requirements of the organizations, associations, and other entities or requirements for the Services that, in each case, pursuant to Applicable Law, shall be adhered to by Seller in the performance of the Services.

"Commercial Operation Deadline" means the date set forth in the Installation Notice to Proceed.

"Contract Awardee" means Sun Tribe Solar LLC, a Virginia limited liability company.

"Contract Date" has the meaning ascribed to it in the first paragraph of this Agreement.

"Contract Price" means the rate, in \$/kWh, for each Billing Year as set forth on Schedule 5 (Contract Price).

"Cost Substantiation" means documentation reasonably acceptable to Purchaser provided by Seller to support any third party cost or expense incurred or to be incurred by Seller resulting from any costs identified under this Agreement for which Cost Substantiation must be supplied. Such documentation shall describe the direct costs (without margin, fee, or mark-up of any kind by Seller), and shall include a statement identifying in reasonable detail the reason for incurring such direct costs, the amount of such direct costs, the act, event or condition or Section giving rise to Seller's right to incur direct costs and that such direct cost is a fair market value price for the service provided or materials supplied (it being understood that such services or materials may be provided or supplied by an Affiliate). Purchaser reserves the right to audit such documentation when submitted or to have a third party audit such documentation, in either case, at Purchaser's sole cost and expense. If Purchaser does not object, in writing, to any such documentation provided by Seller within forty-five (45) Days after its receipt of such documentation, such direct costs shall be deemed accepted by Purchaser and shall be payable in accordance with the terms of this Agreement. Any documentation provided by Seller shall include copies of all invoices and charges,

together with any additional documentation of such costs and expenses incurred which Purchaser deems necessary to enable it to verify the amount of such costs and expenses and to verify the basis for the amount claimed. All costs to be substantiated shall be subject to the review and approval of Purchaser as to their reasonableness; provided that if Seller disagrees with Purchaser's determination, Seller may refer the matter to dispute resolution pursuant to Section 14.5.

"County" has the meaning set forth in the Recitals to this Agreement.

"Day" means a calendar day of time, beginning at midnight in the eastern time zone of the United States coinciding with the calendar day, whether or not a Legal Holiday.

"Decommissioning" has the meaning specified in Section 8.2.

"Decommissioning Amount" means an amount equal to (a) the total expected cost of Decommissioning, as determined by a Qualified Engineer, plus (b) the estimated administrative costs of Purchaser, as reasonably determined and provided in writing by Purchaser to Seller (such amount not to exceed ten percent (10%)). For the avoidance of doubt, the Decommissioning Amount shall not take into account any salvage value of the System or any equipment or materials.

"Decommissioning Bond" has the meaning specified in Section 8.2.

"Defaulting Party" means any Party against which the other Party hereto is entitled to assert an Event of Default under Section 12.1 or 12.2, as applicable.

"Delivery Point" means the point of interconnection for the System, as specified on Schedule 2 (System Description).

"Development Completion Notice" has the meaning specified in Section 4.2.

"Development Tasks" has the meaning specified in Section 4.1.

"Dispute" has the meaning specified in Section 14.5(a).

"EA Agency" means any Governmental Authority or other Person that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the SCC, and any successor agency thereto.

"Electricity" means the net amount of electrical energy generated by the System to be delivered to Purchaser.

"Environmental Attributes" means any and all existing or future certificates, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential treat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting

Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or State law, if applicable, and to a federal or State agency or other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, State or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Benefits. Without limiting the generality of the foregoing, Environmental Attributes include Renewable Energy Credits, carbon trading credits, emissions reduction credits, emissions allowances, green tags tradable renewable credits, and Green-e® products.

“Environmental Incentives” means any and all subsidies, payments, rebates, credits, or other incentives that relate to the self-generation of Electricity, the use of technology incorporated into the System or other similar programs.

“Event of Default(s)” means, as applicable, a Purchaser Event of Default or a Seller Event of Default.

“Expected Commercial Operation Date” means the date on which the Parties expect the System to achieve Final Completion, as set forth in the Installation Notice to Proceed.

“Extended Term” has the meaning specified in Section 2.2.

“Fair Market Value” means 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. For purposes of an appraisal, the Fair Market Value is the sum of (x) the net present value (using a discount rate determined by the appraiser conducting such Fair Market Value appraisal) of the income stream expected to be received by Seller from Purchaser hereunder arising from the operation of the System for the remaining Term (had the Term remained effective for the full Initial Term or Extended Term, as applicable), including the expected Output based on historical Output (and taking into account System degradation), the Contract Price, and factoring in future costs and expenses associated with the System, and (y) the Loss of any Tax Benefits.

“Final Completion” means that each of the following has been achieved:

- (a) all Permits and authorizations, approvals and agreements from the Utility and Governmental Authorities have been received necessary for the operation of the System and delivery and sale of Output to Purchaser;
- (b) the System has been constructed in accordance with the terms of this Agreement;
- (c) Seller has successfully completed all commissioning and start-up tests;
- (d) the Utility has approved installation and given its “Permission to Operate” (or equivalent) notification;
- (e) the Meter has been commissioned and is accurately transmitting data;
- (f) the System is capable of generating Electricity for four (4) continuous hours for sale to Purchaser at the Project Site;

(g) Seller has completed all punch list items, if any, identified by Purchaser to the reasonable satisfaction of Purchaser;

(h) Seller has performed final clean-up of the Project Site, and the Project Site shall have been restored to the same condition as the Project Site was on the Contract Date, except to the extent resulting from installation of the System and ordinary wear and tear; and

(i) Seller has executed and delivered the Final Completion Certificate to Purchaser, in the form of Schedule 8 (Form of Final Completion Certificate), and Purchaser has accepted and counter-signed such certificate.

“Final Completion Certificate” means the certificate attached hereto as Schedule 8 (Form of Final Completion Certificate).

“Final Design” has the meaning specified in Section 4.1(f).

“Financing Party” means any Person providing direct or indirect debt or equity financing, refinancing or extending credit (including any financing lease) to Seller or Seller’s Affiliates or the agent for such Person(s), or any agent or designee of such Person that has been granted a security interest in all or part of the System or this Agreement by Seller.

“Fiscal Year” means the year commencing on July 1 of any year and ending on June 30 of the immediately succeeding year.

“Force Majeure Event” means any act, event, or circumstance, occurring after the Contract Date, that directly delays or prevents a Party from performing all or a portion of its obligations under this Agreement, or from complying with all or a portion of the conditions under this Agreement, if such event or circumstance is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, including: an act of god; pandemic; 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; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; earthquake; hurricane; flood; lightning; wind; drought; and the binding order of any Governmental Authority.

The term “Force Majeure Event” does not include: economic hardship or lack of funds; changes in market conditions, including general deterioration in the economy or in the economic conditions prevalent in the industry which the Party operates; inability of Seller to obtain equipment to construct the System, equipment failures, or acts or omissions of agents or Subcontractors of Seller, except to the extent such acts or omissions arise from a Force Majeure Event; any financial or payment obligations of either Party whether arising under this Agreement or otherwise; the extent to which the Party claiming a Force Majeure Event has caused or contributed to the applicable act, event or condition by its own fault or negligence or has failed to use commercially reasonable efforts to prevent or remedy such act, event, cause or condition and, so far as possible and within a reasonable time period, remove it; any non-national Project Site-specific strike or labor action affecting Seller or its Subcontractors exclusively; weather conditions that are reasonably foreseeable or that are normally experienced in the geographic area of the Project Site; the roof or surface conditions of the Project Site; the increase in costs of or late delivery of materials or the failure of any suppliers to perform, unless caused by circumstances that are themselves Force Majeure Events; or increased costs of the Services.

“Governmental Authority” means any federal, State, regional, city, county (including the County), or local government, any political subdivision thereof, or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency commission, administration, bureau or court having jurisdiction over, as applicable, (a) the System, (b) the transactions relative to the System, (c) the performance of the Services, (d) the obligations or the rights, or both, of the Parties under this Agreement, (e) leases or property rights relative to the Project Site, or (f) the sale, purchase, or other disposition of commodities consumed, produced or generated by the System.

“Hazardous Materials” 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.

“Improvements” has the meaning set forth in the Recitals to this Agreement.

“Initial Design” has the meaning specified in Section 4.1(d)(i).

“Initial Term” has the meaning specified in Section 2.1.

“Installation Notice to Proceed” has the meaning specified in Section 4.2.

“Installation Period” means the date specified in the Installation Notice to Proceed and ending on the Actual Commercial Operation Date.

“Interconnection” means the interconnection of the Site Electrical System to the distribution system, including installation, testing, start-up, commissioning, operation and maintenance of all interconnection facilities.

“Interest Rate” means the per annum rate of interest published from time to time by *The Wall Street Journal* (or successor publication if *The Wall Street Journal* is not longer published) as the prime rate.

“Investment Grade Credit Rating” means a credit rating of at least BBB- by S&P and Baa3 by Moody’s; provided, that if an entity is rated by only S&P or Moody’s, as applicable, then such credit rating shall be at least the rating stated above by S&P or Moody’s, as applicable.

“kWh” means one kilowatt of Electricity supplied for one hour.

“Lease” means that certain Deed of Canopy Lease Agreement, in the form attached hereto as Schedule 10 (Lease), as such agreement may be amended, revised or supplemented from time to time.

“Legal Proceeding” means every judicial, regulatory or administrative action, suit, litigation, administrative proceeding, or other legal or equitable proceeding (including appeals).

“Liens” means all mortgages, liens, pledges, security interests, charges, and encumbrances of any kind or nature whatsoever.

“Loss(es)” means individually or collectively, any and all losses, liabilities, damages, actions, forfeitures, obligations, liens, claims, delays, fines, penalties, recoveries, judgments, payments, demands, allegations, costs, fees and expenses (including reasonable fees and expenses of attorneys, expert witnesses, consultants and other Persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with any Legal Proceeding, suits and causes of action of every kind and character).

“Meter” means the physical metering devices, data acquisition equipment, and apparatus associated with the meter(s) owned by Seller and used to measure and record quantities of Output generated by the System and delivered to Purchaser and other related parameters required for the reporting of data to Seller.

“Monthly Fee” has the meaning in Section 10.2.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“Non-Defaulting Party” means, with respect to the occurrence of any Event of Default, the Party that is not the Defaulting Party in connection with such Event of Default.

“Notice(s)” means written notice from the Representative of the applicable Party to the other, all in accordance with Section 14.6 and the timeframes and other requirements of this Agreement.

“Occupational Safety and Health Law” means any Applicable Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Outage” has the meaning specified in Section 6.9.

“Outage Allowance” has the meaning specified in Section 6.9.

“Output” means the Electricity produced by the System (as expressed in units in kWh) delivered by Seller to Purchaser at the Delivery Point, as recorded by the Meter.

“Output Guarantee” has the meaning specified in Section 6.5(a).

“Party” or “Parties” has the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Permit(s)” means all actions, reviews, approvals, leases, property rights, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, licenses, filings, zoning changes or variances, and entitlements, of whatever kind and however described, which are required under Applicable Law or by any Governmental Authority or the Utility or be obtained or maintained, or both, by Seller or Purchaser with respect to System, the Project Site or the Services.

“Person(s)” means, without limitation, any natural or artificial entity, including an individual, person, firm, corporation, company (limited liability), partnership (including general and limited), joint venture, association, joint-stock company, trust (including business trust(s)), unincorporated organization, Governmental Authority, and other entities.

“PPA Pilot Program Requirements” means the requirements imposed on either Seller or Purchaser, or both, set forth in (a) Chapter 382, as amended, (b) those certain guidelines entitled “Guidelines Regarding Notice Information for a Third Party Renewable Power Purchase Agreement,” as established by the SCC pursuant to Chapter 382, as such guidelines may be amended, revised or updated by the SCC, and (c) the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia between Virginia Electric Power Company and Virginia Energy Purchasing Governmental Association, entered into effective August 1, 2019, as such agreement may be amended, revised or supplemented from time to time.

“Project Schedule” has the meaning specified in Section 4.1(d)(ii), as described in Schedule 4 (Project Schedule).

“Project Site” has the meaning set forth in the Recitals to this Agreement, as described in Schedule 3 (Project Site).

“Prudent Industry Practices” means those practices, methods, techniques, specifications, standards, and acts (including but not limited to those engaged in or approved by a significant portion of the solar-generated electric power industry and/or the North American Electric Reliability Corporation) of design, engineering, installation, safety, maintenance, and performance, as the same may change from time-to-time, as are commonly observed in the United States and commonly performed by competent, qualified Persons performing design, development, installation, management, operation, and maintenance services on solar power generation facilities of the type and size similar to the System, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are (a) considered good, safe and prudent practice in connection with such services and (b) commensurate with a prudent standard of safety, performance, dependability and efficiency. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Punch List” has the meaning specified in Section 5.10(c).

“Purchase Option” has the meaning specified in Section 7.4(a).

“Purchaser” has the meaning set forth in the opening paragraph of this Agreement.

“Purchaser Event of Default” has the meaning specified in Section 12.2.

“Purchaser Indemnified Party(ies)” has the meaning specified in Section 9.2(a).

“Purchaser’s Representative” has the meaning specified in Section 14.15.

“Purchasing Resolution” means the County’s Purchasing Resolution, effective July 1, 2019, as the same may be amended, modified, supplemented or restated from time to time.

“Qualified Engineer” means an independent, professional engineer, reasonably acceptable to Purchaser, licensed in the State and otherwise qualified and experienced in performing the particular work or services to be performed.

“Qualified Surety” means any nationally recognized property and casualty insurance company authorized and licensed to transact suretyship business in the State, and rated by A.M. Best Company with a financial strength rating of “A-” or better and a financial size rating of Class X or larger.

“Renewable Energy Credits” or “RECs” means all certificates for credits created by the generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributable to the Output during the Term created under the Virginia Renewable Portfolio Standard Program pursuant to Va. Code § 56-585.2.

“Reporting Year” means the period that begins each June 1st and ends the following May 30th, except in that the first Reporting Year shall begin on the Contract Date and end on the following May 30th.

“Representative(s)” means Purchaser’s Representative or Seller’s Representative, or both, as the context of the usage of such term may require, as such Representative is designated pursuant to Section 14.15.

“Required Seller Insurance” has the meaning specified in Section 9.1(a).

“Revised Design” has the meaning specified in Section 4.1(e)(i).

“RFP” has the meaning set forth in the Recitals to this Agreement.

“RTO” means the regional transmission operator or organization for which the region of the System resides, or any successor thereto.

“S&P” or “Standard & Poor’s” means the Standard & Poor’s Rating Group (a division of McGraw-Hill Financial, Inc.) or its successor.

“SCC” means the Virginia State Corporation Commission.

“Schedules(s)” means a schedule attached hereto and which is hereby incorporated herein and made a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another schedule (not part of this Agreement), amendment or agreement.

“Seller” has the meaning set forth in the opening paragraph of this Agreement.

“Seller Event of Default” has the meaning specified in Section 12.1.

“Seller Fault” means (a) any breach, failure, nonperformance, or noncompliance by Seller (including the acts or omissions of a Subcontractor) with the terms and provisions of this Agreement for any reason except to the extent such breach, failure, nonperformance, or noncompliance is caused by the occurrence or continuing effect of a Force Majeure Event or Purchaser fault or (b) any negligence or willful misconduct of any agent, officer, employee, or Subcontractor of Seller which, in the case of (a) or (b) of this definition, (1) prevents or, individually or collectively, materially interferes with or materially delays Seller’s or Purchaser’s performance of its obligations, (2) deprives Purchaser of any of its material rights or (3) increases Purchaser’s costs of performing its obligations or, as applicable, reduces its revenues, under this Agreement.

“Seller’s Representative” has the meaning specified in Section 14.15.

“Section” means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or statute.

“Services” means all obligations, duties, responsibilities, and activities which Seller is responsible for performing or causing to be performed pursuant to the requirements of this Agreement.

“Site Adjustment Factor” means the annual Weather-Corrected Expected DC Energy (EN_{DCi}) as defined by Equation (8) in NREL’s technical report *Weather Corrected Performance Ratio NREL/TP-5200-57991*, dated April 2013 divided by the annual As-Built Expected DC Energy (refer to Schedule 6).

“Site Electrical System” means Purchaser’s existing building electrical systems at the Project Site that are owned or leased, operated, maintained, and controlled by Purchaser, and which systems are interconnected with the Utility.

“Shortfall Damages” has the meaning specified in Section 6.5(c).

“State” means the Commonwealth of Virginia.

“Subcontractor(s)” means every Person, other than Seller or its employees, who or which directly or indirectly contracts with Seller to provide labor, services, materials, supplies, equipment, or spare parts for or with respect to the System.

“Suspension Notice” has the meaning specified in Section 5.11(a).

“System” has the meaning specified in the Recitals to this Agreement, as further described in Schedule 2 (System Description).

“Tax Benefits” means any and all investment tax credits, production tax credits, and similar tax credits or grants under federal, State, or local law relating to the installation, ownership, or production of energy from the System.

“Term” has the meaning specified in Section 2.3.

“Termination Payment” has the meaning specified in Section 12.4.

“Utility” means Purchaser’s incumbent electric utility provider, which as of the Contract Date is [Virginia Electric and Power Company], and its successors and permitted assigns.

“VFOIA” has the meaning specified in Section 14.33(e).

SCHEDULE 2

SYSTEM DESCRIPTION

[TO BE DEVELOPED]

SCHEDULE 3

PROJECT SITE

[TO BE DEVELOPED]

SCHEDULE 4

PROJECT SCHEDULE

Milestone	Completion Date
System Installation	
Interconnection	
Start-Up	
Commissioning and Testing of the System	
Final Completion	

SCHEDULE 5

CONTRACT PRICE

Billing Year	Contract Price (in \$/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
[Etc.]	
[Extend for contract extensions]	

SCHEDULE 6

ANNUAL CONTRACT QUANTITY

Billing Year	Annual Contract Quantity (in kWh)	As-Built Expected DC Energy
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
[Etc.]		
[Extend for contract extensions]		

SCHEDULE 7

FORM OF INSTALLATION NOTICE TO PROCEED

_____, 20__

[Seller]

[Seller Address]

[Seller Address]

Re: Installation Notice to Proceed

Dear _____:

This Installation Notice to Proceed is delivered to you pursuant to Section 4.2 of that certain Solar Power Purchase Agreement by and between [FAIRFAX ENTITY] (“Purchaser”) and _____ (“Seller”), dated as of _____, 20__ (the “Agreement”). Capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement.

Purchaser hereby instructs Seller to commence installation of the System on _____, 20__.

Pursuant to the Agreement:

- The Commercial Operation Deadline is _____, 20__;
- The date on which Purchaser and Seller expect the System to complete Final Completion (the “Expected Commercial Operation Date”) is _____, 20__; and
- The Installation Period shall begin on _____, 20__ and end on the Actual Commercial Operation Date.

Sincerely,

[FAIRFAX ENTITY]

By: _____

Name: _____

Title: _____

Acknowledged and Agreed to:

[Seller]

By: _____

Name: _____

Title: _____

SCHEDULE 8

FORM OF FINAL COMPLETION CERTIFICATE

Project Site: _____

Contract Number: _____

Contract Date: _____

Purchaser: [FAIRFAX ENTITY]

Seller: _____

System Description: _____

This Final Completion Certificate is delivered to [FAIRFAX ENTITY] ("Purchaser") pursuant to that certain Solar Power Purchase Agreement dated as of _____, 20__ (as amended, restated, supplemented or otherwise modified, the "Agreement"), by and between Purchaser and _____ ("Seller"), dated as of _____, 20__ (the "Agreement"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement.

The undersigned, in his capacity as an officer of Seller, hereby certifies that each of the conditions to Final Completion of the above described System set forth in the definition of Final Completion, other than Purchaser's acceptance and signing of this Certificate, has been satisfied. The date of Final Completion is the day after the date on which the last of the conditions to Final Completion, other than Purchaser's acceptance and signing of this Certificate, was satisfied and is hereby certified by the undersigned, as of: _____.

The Actual Commercial Operation Date for purposes of the Agreement shall be: _____.

SELLER:

[SELLER NAME]

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED:

PURCHASER:

[FAIRFAX ENTITY]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 9
FORM OF MONTHLY INVOICE

INVOICE

INVOICE NUMBER: Invoice Date:	Billing Period: Account Number: Service Address: Billing Address: Remittance Address:
Project Site: _____	
Contract Number: _____	Contract Date: _____

[SELLER]
[SELLER ADDRESS 1]
[SELLER ADDRESS 2]
[BILLING PHONE #]

INVOICE TO:
[_____] COUNTY OF FAIRFAX, VIRGINIA
OFFICE OF COUNTY ATTORNEY
12000 GOVERNMENT CENTER PKWY, STE 549
FAIRFAX, VA 22035

Billing and Payment Summary

Due Date: _____, 20__
Total Amount Due: \$ _____

Previous Amount Due: \$ _____
Payments as of ____: \$ _____

kWh Unit Cost	\$ _____
kWh Total Cost	\$ _____
kWh Provided	_____
kWh Commitment	_____
kW Peak Supplied	_____

Power Factor Information:

Additional Charges (if any):

[INSERT RUNNING TOTAL KWH LISTING FOR PREVIOUS 13 MONTHS]

***Seller must have the ability to pull interval data on half-hour periods for the last three (3) years and shall make such data available to Purchaser upon Purchaser’s request.**

SCHEDULE 10

LEASE

[TO BE ATTACHED]

SCHEDULE 11

FORM OF ENVIRONMENTAL ATTRIBUTES ATTESTATION

Environmental Attributes Attestation and Bill of Sale

_____, 20__

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [_____] (“Seller”) hereby sells, transfers and delivers to [FAIRFAX ENTITY] (“Purchaser”) the Environmental Attributes (as such terms are defined in the Solar Power Purchase Agreement dated as of [_____] between Purchaser and Seller, as amended, restated, supplemented or otherwise modified, the “Agreement”) arising from the generation of the energy from the Project Site described below:

Project Site and Location:

APPLICABLE ID #:

APPLICABLE ID #:

APPLICABLE ID #:

Fuel Type: Capacity

(kW):

Commercial Operation Date:

Dates	kWh generated	Dates kWh generated

[Continued on following page]

*[Environmental Attributes Attestation and Bill of Sale –
Continued from previous page]*

In the amount of one Environmental Attribute for each kWh generated, and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Purchaser is the one and only sale of the Environmental Attributes referenced herein;
3. To the best of its knowledge, the Environmental Attributes were not sold, marketed or otherwise claimed by a third party;
4. The Environmental Attributes or the electricity that was generated with the attributes was not used to meet any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable mandate, nor to any other entity;
5. The electrical energy that was generated with the attributes was not separately sold, separately marketed, or otherwise separately represented as renewable energy by Seller, or to any other entity;
6. Each of the Environmental Attributes associated with the generation of the indicated energy have been generated at and sold from the Project Site; and
7. The Project Site generated and delivered the energy in the amount indicated as undifferentiated energy.

This serves as a bill of sale, transferring from Seller to Purchaser all of Seller's right, title and interest in and to the Environmental Attributes.

Contact Person: Name: _____ Phone: _____

Witness my Hand:

[SELLER]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 12

FORM OF DECOMMISSIONING BOND

[TO BE INSERTED]

SCHEDULE 13

REPRESENTATIVES

Purchaser's Representative:

Name: _____

Title: _____

Phone: _____

Email: _____

Seller's Representative:

Name: _____

Title: _____

Phone: _____

Cell: _____

Email: _____

SCHEDULE 14

SECURITY/ACCESS REQUIREMENTS

[FOR PUBLIC SAFETY AND JUDICIAL FACILITIES: The following additional security requirements shall apply for access to the Project Site:

(i) All of Seller's employees, contractors and Subcontractors must pass to the satisfaction of Purchaser an additional criminal history check, which will be processed by the Fairfax County Police Department of Fairfax County Sheriff's Department ("Sheriff's Department").

(ii) Seller must be accompanied by a representative of Purchaser; however, Seller must be accompanied by personnel from the Sheriff's Department if passage through a secured area of the Building (as defined in the Lease) is necessary.

(iii) If the Sheriff's Department places the Building under lockdown as a result of a security threat, Seller shall not have access to the Building or the Project Site and any of Seller's agents or contractors within the Building and/or Demised Premises may be asked to immediately leave without gathering any equipment or personal belongings.]

[FOR PUBLIC SCHOOLS:

(i) Seller certifies to Purchaser as follows:

(A) No employee, contractor or Subcontractor of Seller who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and

(B) Unless prior Notice has been given to Purchaser, no employee, contractor or Subcontractor of Seller who has been convicted of a crime of moral turpitude will have direct contact with students.

(ii) The foregoing certifications shall be binding on Seller throughout the Term, and Seller hereby covenants and agrees to provide Purchaser and Fairfax County Public Schools ("FCPS") with immediate Notice of any event or circumstance that renders such certification untrue. Seller hereby covenants and agrees that it will require this certification to be included in all contracts or subcontracts that Seller enters into related to the Project Site in order that the provisions contained herein shall be binding on each contractor and Subcontractor.

(iii) Seller will ensure that no employees, contractors or Subcontractors shall perform any work as prescribed under this Agreement or the Lease in occupied areas of the Project Site during school hours unless FCPS has previously agreed to such work in writing and proper safety precautions have been exercised to isolate the area of any such work.

(iv) All of Seller's employees, contractors and subcontractors shall check in and out at the main office for the Building each day and shall wear any additional identification badges as may be required. All such employees, contractors and subcontractors are required to present photo identification upon request. Seller shall also provide all such employees, contractors and subcontractors with a form of identification reflecting their employment status with Seller, and displaying such individual's name and photograph.

(v) Alcoholic beverages, illegal drugs and weapons are prohibited at the Project Site and shall constitute ground for immediate removal from the Project Site. Seller shall ensure that neither its employees, nor those of any contractor or Subcontractor, shall fraternize in any manner with any student of FCPS at the site of the Project. Purchaser shall have the right to remove from the Project Site any person whose presence Purchaser deems detrimental to the best interests of the FCPS. Any individual who is removed from the Project Site pursuant to this Section may not return to the Project Site or any other FCPS site without prior written permission from FCPS.]

SCHEDULE 15

CONSTRUCTION SAFETY RESOLUTION

1. FAIRFAX COUNTY CONSTRUCTION SAFETY RESOLUTION:

The Contractor shall comply with the resolution adopted by the Fairfax County Board of Supervisors on December 8, 2003, as amended:

- 1.1 It shall be required that each bid submitted to the County for a contract for construction, alteration, and/or repairs, including painting or decorating of a building, highway, street, bridge, sidewalk, culvert, sewer, excavation, grading, or any other construction, include a list of all the following actions which have become final in the three years prior to the bid submission:
 - a. Willful violations, violations for failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan for any other public jurisdiction; or
 - b. Three (3) or more serious construction safety violations for which the bidder was cited by the (a) United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan from any other public jurisdiction.
 - c. Termination of a contract between the contractor and any public entity by their purchasing agent or his designee for safety violations.
- 1.2 If the bidder has not received or been the subject of any such violations referenced in paragraph 8.1 in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Certification of Safety Violations. The bidder will also indicate on this form each state in which work was performed in the three (3) years prior to the bid submission.
- 1.3 No bidder or contractor may bid on a County construction contract who has been the subject of any citations for the type and number of violations listed in aforementioned paragraph 1.1, which have become final within the three (3) years prior to the bid submission.
 - a. Notwithstanding the language of paragraph 1.3, above, any bidder or contractor who has been the subject of a violation, as described in paragraph 8.1 A, which has become final in the three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria set forth in paragraph 8.4, below.
 - b. Notwithstanding the language of paragraph 1.3, above, any bidder or contractor who has been the subject of the type and number of violations as described in paragraph 1.2, which have become final within three (3) years prior to bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 1.5, below.
 - c. Notwithstanding the language of paragraph 8.1.C, above, any bidder or contractor

who has previously been terminated from a public contract, as described in paragraph 8.1.C, within three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 1.5, below.

- 1.4 Prior to bidding on a project, under the provisions of paragraph 1.3 above, a contractor may request that a determination be made by the County's Purchasing Agent or designee, regarding their eligibility to submit a bid on a contract under the terms of this resolution. However, this request for determination and any subsequent adjudication process must be completed prior to submitting a bid on any project and the request for determination must be received by the County's Purchasing Agent or designee no later than twenty-one (21) days before bids are due unless otherwise stated in the Solicitation. A notice of the bidder's request for determination of eligibility will be posted publicly for comments by any interested party. The bidder's request for determination of eligibility and all supporting documentation provided by the bidder to the County in support of its request shall be open to the inspection of any interested person, firm or corporation in accordance to the requirements of Fairfax County Purchasing Resolution and Virginia Freedom of Information Act.
- 1.5 At the request of the Purchasing Agent or designee, the County Risk Manager shall evaluate a contractor's eligibility. Contractors may be subject to a special audit of their safety records as required. The criteria used by the Risk Manager in evaluating contractor's eligibility shall include but not be limited to the following:
 - a. Corrective action taken by a bidder or contractor to prevent the recurrence of safety violations.
 - b. Days Away From Work Incident Rate for the past three (3) years.
 - c. Summary of Work-Related Injuries and Illnesses/Incident Rate for the past three (3) years.
 1. Worker's Compensation Experience Modification Rating for the past three (3) years.
 2. Fatality record for the past five (5) years.
 3. Detailed information regarding the firm's safety program including but not limited to a Safety and Health plan and qualifications of the safety personnel.
 4. Verification that management staff directly in charge of projects that experienced safety violations listed in aforementioned paragraph A will not be involved in the County project.
 5. Incorporation of safety and health related issues into their new employee orientation programs.
 6. Incorporation of work safety as a part of an employee's performance evaluation.
 7. Support of safety related matters by senior/corporate management. Does the firm have a safety policy statement signed by a member of senior/corporate management?
 8. Designation of a full time Safety Manager. Does this person report to a high

level, authoritative position within the Company?

9. Frequency and type of safety inspections conducted at work sites.
 10. The number and type of safety training programs conducted for employees.
 11. Frequency of safety "tailgate meetings" conducted by the firm.
 12. Designation of an active safety committee, frequency of their meetings and list of members of the committee.
 13. Active membership in a recognized construction safety organization in the Washington Metropolitan area, or in the state of contractor's domicile.
- 1.6 The determination of eligibility rendered by the Purchasing Agent or his designee shall be final unless it is appealed in accordance with the provisions of the solicitation or the Fairfax County Purchasing Resolution.
- 1.7 It shall be a condition of each County construction contract, as discussed above, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer, mechanic, or other person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or dangerous to his safety, as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.
- 1.8 The contractor awarded a County construction contract shall certify in writing that they will not knowingly, willfully, or recklessly employ or contract with any person, company, corporation, or any other entity for services pursuant to that contract if such person, company, corporation, or other entity could not have been awarded such contract due to the restrictions in paragraph 1.3, above.
- 1.9 The contractor shall also certify in writing that all safety related information provided in accordance with the Safety Resolution and contract requirements are complete, accurate and truthful.
- 1.10 The failure to provide information requested pursuant to this Resolution or the failure to conform to the certification requirements of this Resolution shall be grounds for disqualifying a prospective bidder.
- 1.11 The County may impose the following sanctions upon a contractor who willfully submits any false or misleading certification or information regarding material facts in connection with submissions pursuant to this Resolution, or willfully omits any certification or information regarding material facts in connection with submissions pursuant to this Resolution. The term willful shall include intentional or reckless acts or omissions.
- a. Disqualify the prospective bidder from bidding a contract.
 - b. Debar the contractor from bidding future contracts for a period not to exceed three years.
 - c. Terminate the contract awarded to the bidder after providing notice and opportunity to be heard.