

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by and between the City of Chino (“**Purchaser**”) and [BP Solar Chino LLC] (“**Seller**”) (each a “**Party**” and collectively the “**Parties**”) as of [MONTH] [DAY], 2025 (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	CITY OF CHINO 5450 Guardian Way Chino, CA 91710 Attention: Christopher Corbin, Deputy Director of Development Services	Name and Address	[BP SOLAR CHINO LLC] 921 E. Fort Ave., Suite 120 Baltimore, MD 21230 Attention: Legal Department
Phone	909-334-3308	Phone	415-524-0429
E-mail	<a href="mailto:ccorbin@cityofchino.org">ccorbin@cityofchino.org</a>	E-mail	<a href="mailto:legal@bluepathfinance.com">legal@bluepathfinance.com</a>
Premises Ownership	Purchaser [X] owns [ ] leases the Premises.	Additional Seller Information	Cc: <a href="mailto:assetmanagement@bluepathfinance.com">assetmanagement@bluepathfinance.com</a>
Tax Status	Exempt		
Project Name	Chino Police Department		

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

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

<b>Exhibit 1</b>	Pricing
<b>Exhibit 2</b>	System Description, Delivery Point and Premises
<b>Exhibit 3</b>	General Terms and Conditions
<b>Exhibit 4</b>	Performance Guarantee

IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date.

PURCHASER: CITY OF CHINO

SELLER: [BP SOLAR CHINO LLC]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## **Exhibit 1**

### **Pricing**

1. **Initial Term:** Twenty Five (25) years, beginning on the Commercial Operation Date (as defined in Section 5(d) of **Exhibit 3**) (the “**Initial Term**”).
2. **Additional Terms:** Up to three (3) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
3. **Contract Price:**

Contract Year	\$/kWh
1	\$0.1710
2	\$0.1710
3	\$0.1710
4	\$0.1710
5	\$0.1710
6	\$0.1710
7	\$0.1710
8	\$0.1710
9	\$0.1710
10	\$0.1710
11	\$0.1710
12	\$0.1710
13	\$0.1710
14	\$0.1710
15	\$0.1710
16	\$0.1710
17	\$0.1710
18	\$0.1710
19	\$0.1710
20	\$0.1710
21	\$0.1710
22	\$0.1710
23	\$0.1710
24	\$0.1710
25	\$0.1710

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

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. A payment or performance bond is being issued to Purchaser under this Agreement. If a payment or performance bond is being issued, Seller may satisfy such obligation by having its installation contractor obtain such bond with respect to the construction contract for the System with Seller named as obligee and Purchaser named as dual obligee (or similar designation) thereunder.
  - b. Interconnection costs for the System will not exceed \$0 in the aggregate.
  - c. Statutory prevailing wage rates (*e.g.*, Davis-Bacon) do apply.

- d. The Contract Price is inclusive of Seller's Taxes (as defined in Section 3(d) of **Exhibit 3**) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).
- e. Purchaser shall be responsible for mowing, trimming, or pruning all grass and vegetation on the Premises.
- f. At the base of each carport column, and to protect against vehicular damage, the structure will be shrouded in a concrete base extending to a height of 30 inches above grade and at least 24 inches in diameter at its base.
- g. All columns must be placed in the planter areas to prevent the loss of any parking spaces.
- h. [reserved.]
- i. Seller shall coordinate with Chino for the 3 phases of construction availability for the parking lot. The double-sided row of patrol vehicles can only move once with ~45 vehicles. Specialty vehicles can move to the East side of the building and/or garage. Phase details must include the conduit run to the electrical room. The City prefers directional boring to trenching.
- j. Carports to have a minimum height clearance of 12', are to be painted, and LED lighting is required underneath the solarports. Lights shall be automatically controlled by a photocell. The western-most row shall have minimum clearance for 13.5' to accommodate police vehicles.
- k. All PV generation will serve the main meter at the Chino Police Department.
- l. Seller shall restripe parking lots for ADA compliance (if applicable).
- m. Seller shall reroute irrigation (if applicable) and must repair any damage done to irrigation systems.
- n. Seller shall add electrical outlets to the arrays:
  - On the Secured side (the west side of the lot) there should be one junction box per row and one 2-plug outlet per column (120V / 20 amps) near the base.
  - On the public parking side (the east side of the lot) there should be one junction box and one locked 2 plug outlet per array (120V / 20 amps) set at ceiling height (8-10 feet).
- o. Seller shall remove trees designated by the City of Chino and must remove stumps to 12" below grade.
- p. Seller shall restore parking lots disrupted by trenching, boring, construction, and/or equipment (if applicable).
- q. Seller shall restore any landscaping disrupted by trenching, boring, construction, and/or equipment.
- r. Adjustment to Contract Price for Unanticipated Conditions and Allowances. For every \$10,000 in cost increase to Seller for an Unanticipated Condition as defined in Section 7(i) of Exhibit 3 or for the allowances set forth in this Section 4 of Exhibit 1, the Contract Price for each Contract Year shall increase by \$0.0003 per kWh. Purchaser has the option to pay the full amount of any such cost increase to Seller in lieu of an increase to the Contract Price. Purchaser must exercise such option in writing within 30 days of Seller providing notice of a Contract Price adjustment pursuant to Section 3(a) of Exhibit 3 or a request for approval of a change order and payment of the related expenses to Purchaser pursuant to Section 7(i) of Exhibit 3. If Purchaser makes such election, Seller shall provide an invoice for such cost increase to Purchaser, which invoice shall be payable in accordance with the requirements of Section 3(c) of Exhibit 3.

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

- a. Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).
- b. Snow removal, tree removal, tree trimming, mowing, trimming, or pruning grass or vegetation, and any landscape improvements (other than the removal of trees located in the applicable parking lots).
- c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including

painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).

- d. [reserved].
- e. [reserved]
- f. Structural upgrades to the Improvements, including ADA upgrades (other than the restriping of the applicable parking lots for ADA compliance purposes).
- g. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support, and ADA access).
- h. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser's energy use, the Premises, and the Improvements, including building plans and specifications.

**6. Early Termination Payment Schedule:**

Contract Year	Early Termination Payment
1	\$7,850,756
2	\$7,566,622
3	\$6,136,548
4	\$5,000,655
5	\$4,158,787
6	\$2,707,278
7	\$1,922,909
8	\$1,843,424
9	\$1,761,048
10	\$1,677,985
11	\$1,605,321
12	\$1,538,143
13	\$1,468,182
14	\$1,395,243
15	\$1,317,087
16	\$1,198,558
17	\$1,091,707
18	\$987,989
19	\$879,027
20	\$764,784
21	\$648,077
22	\$525,014
23	\$395,228
24	\$258,048
25	\$113,032
Additional Term	FMV

- 7. Performance Guarantee:** Seller shall provide a performance guarantee with respect to the System in accordance with the terms set forth in Exhibit 4.

## **Exhibit 2**

### **System Description, Delivery Point and Premises**

1. **Premises Location:** 5450 Guardian Way, Chino, CA 91710
2. **System Size (DC kW):** 988.95 kW (DC)
3. **System Description** (Please include the type of Module, Inverter, and Racking that will be used):  
  
Carport Structures  
  
**Module:** Heliene - 156HC M10 SL 570 or similar  
**Inverter:** Chint – CPS SCA36KTL-DO/US-480, SCA50KTL-DO/480, SCA60KTL-DO/480 or similar  
**Racking:** to be determined
4. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
  - a. The Premises, including the Improvements (as applicable);
  - b. Proposed System location;
  - c. Delivery point for electricity generated by the System, which shall be at the Meter (as defined in Section 10(a) of **Exhibit 3**) (the “**Delivery Point**”);
  - d. Access points needed for Seller to install and service the System (*e.g.*, building. access, electrical room, stairs); and
  - e. Construction assumptions (if any).

## Schedule A



### Exhibit 3

#### General Terms and Conditions

1. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser's electricity consumption requirements at the Premises exceed the electricity output of the System. Any delivery of electricity prior to the Commercial Operation Date (as defined in Section 5(d)) shall be treated as the delivery of limited amounts of test energy and shall not indicate that the System has been put in Commercial Operation (as defined in Section 5(d)) by the delivery of such test energy.
2. **Term and Termination.**
  - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
  - b. **Additional Terms.** The Parties may agree in writing to extend the term of this Agreement for one or more Additional Term(s) at a Contract Price to be agreed.
  - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to the date that Seller or its installation contractor has begun physical installation of the System on the Premises (the “**Commencement of Installation**”), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 5 of Exhibit 1, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have negotiated in good faith a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, then Seller may terminate this Agreement by providing ten (10) days’ prior written notice to Purchaser. Neither Party shall be liable for any damages in connection with such termination.
  - d. **Payment Limitations.** If, during the Term of this Agreement, Purchaser is bound or deemed bound by the provisions of any state laws concerning the sufficiency of Purchaser appropriations and the legal ability of Purchaser to enter into binding contracts and agreements with annual obligations in excess of annual Purchaser appropriations (“**Appropriation Bound**”) the provisions of Sections 2(d) – 2(g) of this Agreement shall apply. If Purchaser is Appropriation Bound, Seller and Purchaser hereby expressly acknowledge and agree that the obligation of Purchaser to pay invoices for electricity under this Agreement or otherwise during each fiscal year of Purchaser (each, a “**Fiscal Year**”) will be legally binding solely to the extent of amounts appropriated for and legally available to Purchaser for such purposes during such Fiscal Year. The Parties acknowledge that all payment obligations of Purchaser under this Agreement will constitute currently budgeted expenditures. The Parties acknowledge that all payments obligations of Purchaser under this Agreement will not constitute a general obligation debt, an indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation within the meaning of any constitutional or statutory provisions or limitation. Purchaser represents to Seller, and the parties hereto acknowledge that, Purchaser is Appropriation Bound.
  - e. **Event of Non-Appropriation.** If Purchaser is Appropriation Bound, if by the last day of any Fiscal Year, Purchaser has failed, for any reason, to obtain an appropriation of sufficient legally available amounts to be used to pay invoices for electricity (as provided in this Section 2) that will be due hereunder for and during the next ensuing Fiscal Year, then an Event of Non-Appropriation shall be deemed to have occurred (an “**Event of Non-Appropriation**”). However, the Parties hereto agree that no Event of Non-Appropriation shall be deemed to have occurred if the foregoing failure set forth in this Section 2(e) is cured on or before the thirty-first (31<sup>st</sup>) day of the Fiscal Year for which such Event of Non-Appropriation shall be deemed to have occurred by enactment of an appropriation providing sufficient legally available amounts to Purchaser, or Purchaser otherwise making sufficient money available, to pay invoices for electricity (as provided in this Section 2) that will be due hereunder for and during such Fiscal Year.
  - f. **Present Expectation.** If Purchaser is Appropriation Bound, it is the present intention and expectation of Purchaser that the applicable budgetary entity, within the limits of available funds and revenues, will make an appropriation of a sufficient amount to fund Purchaser’s obligations hereunder during each Fiscal Year during the Term; provided, however, this expectation of Purchaser shall not be binding upon any future applicable budgetary entity in any future

Fiscal Year, except to the extent of any previously appropriated funds. Purchaser shall use good faith efforts to have funds properly budgeted in the general operating expense section of its budget (and not a specific line item) appropriated, allotted, or otherwise made available for this Agreement (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner.

- g. **Notice and Effect of Event of Non-Appropriation.** In an Event of Non-Appropriation occurs, Purchaser shall promptly give notice of such Event of Non-Appropriation (the “**NAE Notice**”). Within 30 days of Seller’s receipt of an NAE Notice, Seller, in its sole discretion, may: (i) terminate this Agreement and remove the Project, or (ii) continue to operate the Project and deliver the electricity to Purchaser or to a third party or utility company without payment by Purchaser therefore during the applicable Fiscal Year (and each Fiscal Year thereafter until an appropriation of funds is made). If Seller does not provide notice to Purchaser of Seller’s election within such period, Seller shall be deemed to have elected option (ii), provided that, if Seller elects or is deemed to have elected option (ii) it may subsequently change its election at any time upon prior written notice to Purchaser. If Seller elects (or is deemed to have elected) option (ii), all obligations of Purchaser under this Agreement shall remain in full force and effect, except for the obligation to make payment for energy delivered subsequent to the Event of Non-Appropriation. Should Purchaser receive an appropriation for this Agreement during the continuation of the Event of Non-Appropriation, before termination Seller has exercised option (i), Purchaser shall pay such monies to Seller for any amounts due and owing under this Agreement to the extent permissible under applicable law, and such Event of Non-Appropriation shall be deemed not to have occurred. Notwithstanding the occurrence of any Event of Non-Appropriation or the delivery of the NAE Notice, Purchaser will not interrupt or impair the delivery of electricity or jeopardize Seller’s sale, transfer or other monetization of Environmental Incentives, or Tax Credits (each as defined in Section 4). If Seller elects option (i) above, Seller shall cause the System to be disconnected and removed from the Premises and Purchaser shall pay to Seller all reasonable removal costs within 30 days after receiving Seller’s invoice for such removal costs.

### 3. **Billing and Payment; Taxes.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 for the applicable Contract Year (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Purchaser shall pay, or reimburse Seller for, additional costs or any loss of economic value resulting from items differing from the assumptions set forth in Section 4 of Exhibit 1 or the exclusions set forth in Section 5 of Exhibit 1.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state for the applicable month: (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net forty five (45) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such forty five (45) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Wall Street Journal Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.**
- i. **Purchaser’s Taxes.** If applicable to Purchaser, Purchaser is responsible for the payment of, or reimbursement of Seller for: (i) all taxes assessed on the generation, sale, delivery, or consumption of electricity produced by the System or the interconnection of the System to the utility’s electricity distribution system; and (ii) real property taxes.
- ii. **Seller’s Taxes.** Seller is responsible for the payment of: (i) income taxes or similar taxes imposed on Seller’s revenues due to the sale of electricity under this Agreement; and (ii) personal property taxes imposed on the System (“**Seller’s Taxes**”).

4. **Environmental Attributes, Environmental Incentives, and Tax Credits.** Seller is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include Environmental Incentives, or the right to Tax Credits or any other attributes of ownership and operation of the System (except for Environmental Attributes), all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing, and transferring all Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy



generated by the System in a manner necessary to qualify for such available Environmental Incentives and Tax Credits. Notwithstanding anything to the contrary contained herein, Purchaser shall be the owner of all Environmental Attributes.

**“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) 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; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation, or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits, and Green-e® products.

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

**“Governmental Authority”** means any national, state, or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public, or statutory instrumentality, authority, body, agency, bureau, or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

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

## **5. Project Development; Force Majeure; Commercial Operation.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c), Section 11, and the remaining provisions of this Section 5. Seller’s obligations under this Agreement are conditioned upon the satisfaction of the following conditions as determined by Seller: (i) a physical inspection of the Premises and the Improvements, including, if applicable, geotechnical work to confirm the suitability of the Premises and the Improvements for the System, (ii) confirmation that Seller will obtain all applicable Environmental Incentives, Tax Credits, and other economic benefits related to the construction, ownership, and operation of the System, (iii) receipt of all Approvals (as defined below), (iv) real estate due diligence; (v) a subordination and non-disturbance agreement in form and substance satisfactory to Seller (each, an **“SND A”**) from the owner of the Premises and/or the Improvements and any lienholder with a Lien on the Premises or the Improvements, (vi) Seller securing financing in such amount and upon terms and conditions satisfactory to Seller, and (vii) such other documentation securing Seller’s access rights pursuant to Section 7(a) as Seller may request. Seller may terminate this Agreement without further obligation if the foregoing conditions are not satisfied within 180 days of the Effective Date and such termination shall not constitute a Default Event (as defined below).
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an **“Approval”**):
  - i. any zoning, land use and building permits required for Seller to construct, install, and operate the System; and
  - ii. any agreements and approvals from the utility necessary in order to interconnect the System to the Premises’ electrical system and/or to the utility’s electric distribution system.

Purchaser shall cooperate with Seller’s reasonable requests to assist Seller in obtaining such Approvals, including the execution of documents required to be provided by Purchaser to the local utility.

c. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations (other than payment obligations) for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall not be excused from performing the obligations described herein for any Force Majeure Event unless such party notifies the other Party in writing as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of two hundred seventy (270) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, and (b) Seller shall remove the System as required under **Section 9** (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate this Agreement). If Purchaser elects to terminate this Agreement in accordance with this Section, Purchaser shall pay the applicable Early Termination Payment (as defined in **Section 11(b)(iii)**). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial two hundred seventy (270) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

**"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming a Force Majeure Event, including failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid; or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.

- d. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation. The **"Commercial Operation Date"** shall be the date specified in such notice as such date.

**"Commercial Operation"** means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser's reasonable request.

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

- a. **Seller's Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller, at its sole cost and expense, except as otherwise expressly provided in this Agreement, shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply in all material respects with all applicable rules, regulations, and local building codes.
- b. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser. Standard scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from Purchaser's breach of this Agreement or the acts or omissions of

Purchaser, its agents, employees, or contractors. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. If Seller incurs incremental costs to maintain the System due to conditions at the Premises or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule, and other terms of this Agreement will be, with the prior written consent of Purchaser (which shall not be unreasonably withheld, conditioned, or delayed) equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller.

- c. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the forty-eight (48) hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(b) or requested by Purchaser under this Section 6(c) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least five (5) days in advance. Purchaser is not obligated to accept or pay for electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount of electricity at the then applicable Contract Rate and any associated lost or recaptured Environmental Incentives or Tax Credits and revenue from lost sales of Environmental Attributes and penalties payments associated with the same.
- d. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser shall regularly mow, trim, and prune all grass and vegetation under, near, and adjacent to the System. Purchaser (i) shall ensure that the Premises remains interconnected to the local utility grid at all times and shall be responsible for all costs incurred in connection therewith (other than any costs set forth as Seller's responsibility in Exhibit 1); and (ii) shall not permit cessation of electric service to the Premises from the local utility, unless caused solely by the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser.
- e. **No Alteration of Premises.** Purchaser shall not make any alterations or repairs to the Premises or any Improvement which could adversely affect the operation and maintenance of the System without the prior written consent of Seller. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work, and any replacement of the System after completion of Purchaser's alterations and repairs shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

## **7. Installation, Operation and Maintenance.**

- a. **Access Rights.** Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and the utility a non-exclusive, irrevocable, sub-licensable license (the "**Access License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred twenty (120) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of installing, operating, using, maintaining, and removing the System, performing all of Seller's obligations under this Agreement, enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Premises and/or to the utility's electric distribution system. In addition to the foregoing, if the System shall be ground-mounted and located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller a non-exclusive, irrevocable, sub-licensable license (the "**Fenced Area License**", and together with the Access License, the "**Licenses**") for purposes of the installation, operation, use, maintenance, and removal of the System on such licensed area of the Premises during the

License Term. Any access rights provided hereunder shall require Seller to provide at least twenty-four (24) hours' prior written notice to Purchaser of Seller's intent to access the Premises, except in cases of an emergency in which case, where feasible, at least six (6) hours' prior notice to Purchaser shall be required. Seller shall cooperate with Purchaser on the timing and scope of access so as to minimize disruptions to Purchaser's operations. Seller and its employees, agents and contractors must comply with Purchaser's site safety and security requirements when on the Premises during the License Term. During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties to interfere with, such rights or access. The grant of the Licenses hereunder shall survive the termination of this Agreement by either Party.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees, or separate contractors.
- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause, and where possible, shall not in any way permit, any interference with the System's Insolation, and shall ensure that vegetation on the Premises is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Commercial Operation Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall be permitted to use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Premises and the Improvements free and clear of any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature (each a "**Lien**") on or with respect to the Premises or the Improvements related to such charges, other than those Liens granted hereunder and Liens which Seller is permitted by law to place on the Premises or the Improvements due to non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against the Premises or the Improvements as a result of Seller's breach of its obligations under this Section 7(e), provided that Seller shall have the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such Lien from title to the Premises and the Improvements or that assure that any adverse judgment with respect to such Lien will be paid without affecting title to the Premises or the Improvements.
- f. **Delivery of Financial Statements.** During the Term, Purchaser shall deliver to Seller (i) its annual audited financial statements within 180 days after the end of each Fiscal Year, (ii) its annual budget for the succeeding Fiscal Year promptly following approval thereof, (iii) proof of appropriation of funds for payments due hereunder with its annual budget, and (iv) such other financial statements and information relating to the ability of Purchaser to satisfy its obligations under this Agreement as may be reasonably requested by Seller from time to time.
- g. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the System. Purchaser shall promptly notify Seller in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to Seller. Purchaser shall indemnify Seller from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against the System.
- h. **Breakdown Notice.** Purchaser shall promptly notify Seller following the discovery by Purchaser of any material malfunction in the operation of the System, an interruption in the supply of electrical energy, or anything else adversely affecting the System. Purchaser shall notify Seller immediately upon the discovery of an emergency condition

affecting the System. Seller shall promptly commence the repair of the System in accordance with Section 6.a.

- i. **Unanticipated Conditions.** If any conditions exist, arise, or are discovered at the Premises (each, an “**Unanticipated Condition**”) that differ materially from: (i) the information, assumptions, and exclusions contained in the documents referenced in Exhibit 1 and Exhibit 2, (ii) the assumption that the soils at the Premises have an allowable vertical bearing pressure of 2,000 psf and a lateral bearing pressure of 300 psf/ft below natural grade, or (iii) those conditions that Seller discovered or should have reasonably discovered based on the visual inspection of the Premises, including without limitation, conditions related to Hazardous Substances (as defined below), or archeological findings, soils conditions, or subsurface obstructions of which Contactor was not aware on the date of this Agreement or could not reasonably be expected to anticipate based on the inspection described above, and such conditions involve the incurrence by Seller of any material expenses to correct or accommodate such conditions, Seller shall submit a request for approval of a change order and payment of the related expenses to Purchaser. Purchaser and Seller may mutually agree to reduce portions of the work under this Agreement to offset the change order request to comply with Purchaser budget limits.

## **8. Relocation of System.**

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

## **9. Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises (except as set forth below) no later than ninety (90) days after the expiration of the Term, provided that Seller shall receive an additional thirty (30) days to complete the removal if Seller is diligently pursuing removal in good faith. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), provided that, (i) if the System is ground or canopy mounted, Seller shall not be responsible for the removal of any below grade structures, and (ii) if the System is roof mounted, Seller shall not be responsible for the repair and restoration of the roof or the roof membrane. Purchaser must provide sufficient access, space, and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

## **10. Measurement.**

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

## **11. Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non-Defaulting Party**” and each of the following is a “**Default Event**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay;
- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days, the cure period will be extended for a further reasonable period of time (but not beyond ninety (90) days) if the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure and there is no material adverse effect to the Non-Defaulting Party resulting from such extended cure period;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or
- v. Purchaser (i) loses its rights to occupy and enjoy the Premises; or (ii) prevents Seller from installing the System, delivering electric energy from the System, or performing any material obligation under this Agreement.

b. **Remedies.**

- i. Suspension. Upon the occurrence and during the continuation of a Default Event by Purchaser, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement.
- ii. Termination. Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement by providing five (5) days prior written notice to the Defaulting Party; provided, that, if a Default Event under Section 11(a)(iv) occurs, the Non-Defaulting Party may terminate this Agreement immediately.
- iii. Damages Upon Termination by Default. Upon termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Early Termination Payment**”):
  1. Termination by Seller. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Early Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Early Termination Payment Schedule set forth in Section 6 of Exhibit 1; (ii) all reasonable costs (termination fees or penalties), if any, incurred in connection with the termination of, or default under, any other agreements associated with the System (*e.g.*, third-party contractor agreements, arrangements with the local utility, incentive, rebate, or Environmental Incentives sale agreements); (iii) all reasonable costs incurred by Seller in connection with the Default Event (including reasonable attorneys’ fees and costs of dismantling, packing, removing and transporting the System); and (iv) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.
  2. Termination by Purchaser. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Early Termination Payment payable to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 7% per annum) of the excess, if any, of the reasonably expected cost of electricity from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all direct costs (including reasonable attorneys’ fees) reasonably incurred by Purchaser in connection with the Default Event, including reasonable attorneys’ fees and costs of dismantling, packing, removing and transporting the System; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Early Termination Payment determined under this Section 11(b)(iii)(2) cannot

be less than zero.

- iv. **Liquidated Damages.** The Parties agree that, if either Party terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Early Termination Payment as determined in accordance with Section 11(b)(iii)(1) and Section 11(b)(iii)(2), as applicable, is a reasonable approximation of the damages suffered by Seller or Purchaser, as applicable, as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Purchaser, unless Purchaser pre-pays the cost of removal and restoration reasonably estimated by Seller.
- d. **Reservation of Rights.** Except in the event of a termination under Section 11(b)(ii) and payment of the Early Termination Payment, if any, determined pursuant to Section 11(b)(iii), nothing in this Section 11 limits Seller's or Purchaser's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- e. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Early Termination Payment following a Default Event by Purchaser.
- f. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

## 12. **Representations and Warranties.**

- a. **Seller Representations and Warranties.** Seller represents and warrants to Purchaser:
  - i. **Organization; Authorization; Enforceability.** Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of Seller, enforceable against Seller in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
  - ii. **Authorizations.** Seller has obtained all licenses, authorizations, consents, and approvals required by any Governmental Authority or other third party and necessary for Seller to execute and deliver this Agreement and perform its obligations hereunder; and Seller is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:
  - i. **Organization; Authorization; Enforceability.** Purchaser is a body politic of the state in which the Premises is located, duly organized and existing under the Constitution and laws of such state, and is authorized under the Constitution and laws of such state to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations under this Agreement. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Purchaser's governing body and such action is in compliance with all public bidding and other state and federal laws applicable to this Agreement. This Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally).
  - ii. **Authorizations.** Purchaser has obtained all licenses, authorizations, consents, and approvals required by any

Governmental Authority or other third party and necessary for Purchaser to execute and deliver this Agreement and perform its obligations hereunder; and Purchaser is in compliance with all laws that relate to this Agreement in all material respects.

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

### 13. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
  - i. **Seller's Insurance.** Seller shall maintain or cause the following to be maintained (a) property insurance on the System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (d) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
  - ii. **Purchaser's Insurance.** Purchaser agrees to maintain a program of self-insurance of \$5,000,000 or (a) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and (b) property insurance on the Premises and the Improvements in an amount not less than the replacement value of the Premises and the Improvements.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review, or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.



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

**a. Ownership of System.**

- i. Ownership; Personal Property. Throughout the Term, Seller shall be the legal and beneficial owner of the System and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined in Article 9 of the Uniform Commercial Code.
- ii. Notice to Purchaser Lienholders. Purchaser shall place all parties having a Lien on the Premises or any Improvement on notice of the ownership of the System and the legal status or classification of the System as personal property. If any Lien on the Premises or any Improvement could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from the lienholder.
- iii. Fixture Disclaimer. If Purchaser is the fee owner of the Premises and the Improvements, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises and the Improvements in the office where real estate records are customarily filed in the jurisdiction where the Premises and the Improvements are located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from the fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
- iv. SNDA. Upon request, Purchaser shall deliver to Seller an SNDA in form and substance satisfactory to Seller and Purchaser to Seller from the owner of the Premises and/or the Improvements and any lienholder with a Lien on the Premises or the Improvements.
- v. Eviction Notice. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.
- vi. Memorandum. Purchaser shall execute and deliver a memorandum of this Agreement prepared by Seller, and Seller shall have the right to record the memorandum in the real estate records of the county where the Premises is located.

**b. Option to Purchase.**

- i. Exercise of Option. At the end of the 7<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, and 20<sup>th</sup> Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Early Termination Payment applicable as of the date of the transfer of title to the System. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. Fair Market Value. The "Fair Market Value" of the System shall mean the amount that would be paid for the System in place and in use in arm's length transaction between a willing and informed buyer and seller under no compulsion to transact. The Parties shall determine the Fair Market Value by mutual agreement; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System 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 Purchaser.

- iii. Title Transfer; Warranties; Manuals. Seller shall transfer good title to the System free and clear of all liens arising by or through Seller to Purchaser upon Seller's receipt of the purchase price together with all taxes due upon such sale and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "AS IS, WHERE IS, WITH ALL FAULTS" AND SELLER OTHERWISE DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE SYSTEM (OTHER THAN AS TO TITLE AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. Seller will provide copies to Purchaser of the applicable warranty documentation and assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms. Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training, at Seller's cost, on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and Seller will have no further liabilities or obligations hereunder or with respect to the System.

**15. Indemnification; Limitations of Liability and Remedies; Disclaimer of Warranties.**

- a. General. Each Party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, contractors, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees asserted by a third party (collectively, "Liabilities") resulting from any third party actions relating to (1) the Indemnifying Party's breach of this Agreement or (2) injury to or death of persons, and damage to or loss of property, to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its affiliates, contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).
- b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), promptly upon the receipt of information of any possible Claim or the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and any defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. The Indemnifying Party shall not be liable under Section 15(a) for any Claim for which notice is not timely provided to the Indemnifying Party in accordance with this Section 15(b) to the extent such failure to give notice prejudices the Indemnifying Party.
- c. Environmental Indemnification.
  - i. Seller Indemnity. Seller shall indemnify, defend, and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(iii)) to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents, or employees.
  - ii. Purchaser Indemnity. Purchaser shall indemnify, defend, and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents, or employees.

- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance or any deposit, spill, or release of any Hazardous Substance, at, on, above, below or near the Premises generally. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

- i. **NO CONSEQUENTIAL DAMAGES.** EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD-PARTY CLAIMS PURSUANT TO THIS SECTION 15, NEITHER PARTY NOR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, AGENTS, EMPLOYEES, CONTRACTORS SUBCONTRACTORS, OR SUPPLIERS WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE (INCLUDING LOST REVENUES, LOST PROFITS, LOST BUSINESS OPPORTUNITY OR ANY BUSINESS INTERRUPTION) ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE PREVIOUS SENTENCE, THE EARLY TERMINATION PAYMENT SHALL BE DEEMED TO BE DIRECT DAMAGES, AND NOT INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES FOR PURPOSE OF THIS SECTION 15(D)(I).
- ii. **ACTUAL DAMAGES.** EXCEPT WITH RESPECT TO INDEMNIFICATION OF LIABILITIES AND CLAIMS PURSUANT TO THIS SECTION 15, SELLER’S AGGREGATE LIABILITY UNDER THIS AGREEMENT ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT CANNOT EXCEED THE TOTAL PAYMENTS ACTUALLY MADE BY PURCHASER UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 15(D)(II) WILL APPLY WHETHER SUCH LIABILITY OR CLAIM ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.
- e. **NO WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO WARRANTY WITH RESPECT TO THE SYSTEM OR THE PERFORMANCE OF SELLER’S OBLIGATIONS HEREUNDER, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.
- f. **[reserved.]**
- g. **Comparative Negligence.** Where negligence is determined to have been joint, contributory, or concurrent, each Party shall bear the proportionate cost of any Liability.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law (as defined in Section 16(c)) has occurred or will occur that has or may have a material adverse effect on Seller’s rights, entitlement, obligations, or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and, at Seller’s option, remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller’s performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser and, at

Seller's option, remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

- c. **“Change in Law”** means (i) the enactment, adoption, promulgation, modification, or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations, or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

## **17. Assignment and Financing.**

### **a. Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement or the System to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing or capital from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

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

- c. **Rights of Financing Party.** Notwithstanding any provisions to the contrary herein, each Financing Party shall have the following rights:

- i. **Step-In Rights.** The Financing Party, as owner or collateral assignee of the System, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of an owner or secured party, as applicable, with respect to this Agreement and the System.
- ii. **Right to Perform.** The Financing Party shall have the right, but not the obligation, to pay all sums due hereunder and to perform any other act, duty, or obligation required of Seller hereunder in the time and manner provided hereunder. Nothing herein requires the Financing Party to pay any sums due hereunder or to perform any act, duty, or obligation of Seller hereunder (unless the Financing Party has assumed in writing Seller's obligations under this Agreement), but Purchaser hereby gives it the option to do so.
- iii. **Exercise of Remedies.** Upon the exercise of any remedies of the Financing Party, including any sale of the System by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transfer or assignment of this Agreement. Any such exercise of remedies shall not constitute a Default Event under this Agreement.

- iv. Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.
- v. Right to Cure. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement specifying the condition giving rise to such right, and the Financing Party shall not have cured (or caused to be cured) the condition giving rise to the right of termination or suspension within thirty (30) days after receipt of such notice or (if longer) the periods provided for in this Agreement; provided that if such Default Event by Seller cannot reasonably be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such Default Event within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period. If the Financing Party or its assignee (including any purchaser or transferee) shall acquire title to or control of Seller's assets pursuant to an exercise of remedies by the Financing Party, and shall, within the time periods set forth in this Section 17(c)(v), cure all Default Events by Seller which are capable of cure by a third person or entity existing as of the date of such change in title or control, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.
- vi. Financing Party a Third Party Beneficiary. Purchaser agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 17(c).

**18. Confidentiality**

- a. Confidential Information. “**Confidential Information**” shall include all information of any nature and in any form which at the time or times concerned is not generally known to the public, including, but not limited to, information relating to business and product or service plans, design, financial projections, customer lists, business forecasts, and financial models. To the maximum extent permitted by applicable law, if either Party provides Confidential Information to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement.
- b. Permitted Disclosures. Notwithstanding Section 18(a):
  - i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants, Financing Parties, and direct and indirect successors or permitted assignees (collectively, “**Representatives**”). Each Party is liable for breaches of this Section 18 by any person to whom that Party discloses Confidential Information.
  - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law.
- c. Miscellaneous. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party may be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of

this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon, and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the foregoing provisions, Seller is entitled to place signage on the Premises reflecting its association with the System and to disclose the size and location of the System, the name of Purchaser, and the name of the installation contractor in the ordinary course of its business to third parties who agree to keep such information confidential.

## 19. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in San Bernardino, CA. The arbitration shall be administered by the American Arbitration Association in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by mediation of the actual dispute; (ii) actions to collect payments not subject to a good faith dispute; or (iii) claims involving third parties who have not agreed to participate in arbitration.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or certified or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents, and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party or the 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 Governmental Authority 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, at Seller's option, remove the System in accordance with Section 9.

- h. **Estoppel.** Either Party, without charge, at any time and from time to time, within seven (7) days after receipt of a written request from the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- i. **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 purchaser of electricity from the System.
- j. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- k. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- l. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- m. **No Third-Party Beneficiaries.** Except for Financing Parties and successors and permitted assigns, 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.
- n. **Counterparts; Electronic Signatures and Records.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law.

End of **Exhibit 3**

## Exhibit 4

### Performance Guarantee

a. Seller guarantees that the System will generate the guaranteed kilowatt-hours (kWh) of energy set forth as follows:

- i. If at the end of Contract Years 3, 6, 9, 12, 15, 18, 21 and 24 the aggregate Actual kWh (defined below) generated by the System for the prior three (3) year period is less than the Guaranteed kWh for such period, then Seller will credit the Purchaser's next invoice by the amount of the any kWh production shortfall for such three (3) year period. The method of determining the value of any kWh production shortfall shall be as follows ("**Shortfall Amount**"): Shortfall Amount equals the difference between the Guaranteed kWh and the Actual kWh produced multiplied by the difference between the actual amount Purchaser paid for power by the Contract Price. I.E.:

Shortfall Amount (\$) = (Guaranteed kWh – Actual kWh) x (actual amount Purchaser paid per kWh – Contract Price per kWh)

- ii. If at the end of each applicable three (3) year period the Actual kWh is greater than the Guaranteed kWh for such period, this surplus will be carried over and will be used to offset any deficits that may occur in the subsequent three year period.

- iii. Guaranteed kWh:

Production Guarantee		
Contract Years	Expected kWh	Guaranteed kWh
1 to 3	4,465,532	4,242,255
4 to 6	4,398,883	4,178,939
7 to 9	4,333,229	4,116,568
10 to 12	4,268,555	3,841,700
13 to 15	4,204,847	3,784,362
16 to 18	4,142,089	3,727,880
19 to 21	4,080,267	3,672,241
22 to 24	4,019,369	3,617,432

The Guaranteed kWh values are subject to downward adjustment for weather and fire-related smoke conditions to determine the Guaranteed kWh. Seller will use local weather data to determine the Guaranteed kWh based on available data from a locally installed weather station at the Premises owned and properly maintained by Seller.

"**Actual kWh**" means the AC electricity produced by the System and delivered to Purchaser at the Delivery Point in kilowatt-hours measured and recorded by Seller during each Contract Year. To measure the Actual kWh, Seller will use a monitoring service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means. Purchaser will have 24/7 login access to the monitoring service to independently verify Actual kWh generated.

- iv. The guaranty set forth in this Exhibit does not apply to the extent of any reduction in the Actual kWh due to the following (including the downtime required for repair, replacement or correction): (i) a Force Majeure Event, (ii) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (iii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the utility; (iv) theft or vandalism of the System; (v) curtailment or



reduction of energy production required by the utility or grid operator; (vi) Outages or other shut downs of the System at the request of Purchaser (including due to maintenance of the Facility or Premises or relocation of the System); (vii) Purchaser's failure to perform, or breach of, Purchaser's obligations hereunder; and (viii) excessive soiling of the panels above and beyond the estimated annual soiling loss in the HelioScope model.