

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “*PPA*”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”), by and between \_\_\_\_\_, LLC, a \_\_\_\_\_ limited liability company (together with its successors and permitted assigns, the “*Seller*”), and \_\_\_\_\_ (“*Buyer*”). Seller and Buyer are sometimes hereinafter referred to individually as a “*Party*” and collectively as the “*Parties.*”

### RECITALS

A. Seller intends to build, finance, own and operate a distributed generation solar energy facility (the “*Solar System*”) as more particularly defined in **Exhibit A** hereto on the premises (the “*Premises*”) described in **Exhibit B** hereto.

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Energy Output generated by the Solar System during the Term and otherwise in accordance with the terms of this PPA.

### AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this PPA and the Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Buyer agree as follows:

#### ARTICLE 1

##### DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in **Exhibit D** or elsewhere in this PPA.

1.2 Rules of Interpretation. The rules of interpretation in **Exhibit D** shall apply to this PPA unless expressly provided otherwise.

#### ARTICLE 2

##### PREMISES LICENSE; TERM; COMMERCIAL OPERATION

2.1 Premises License. Buyer hereby grants to Seller an irrevocable license, coupled with an interest: (a) to install the Solar System on the Premises; (b) to own, use, and maintain the Solar System on the Premises in accordance with this PPA; (c) to interconnect the Solar System to any electrical system located on or adjacent the Premises in accordance with this PPA; and (d) to access the Premises in connection with the ownership, operation, maintenance, or removal of the Solar System, including the right to use other real property owned or occupied by Buyer that is adjacent to the Premises reasonably in order to access the Premises and to maintain (and if applicable, remove) the Solar System. The license granted to Seller under this Section 2.1 shall terminate upon the earlier of: (x) the Solar System Removal Date; or (y) the Transfer Date.

2.2 Term.

(a) The initial term of this PPA (the “**Initial Term**”) shall commence on the Effective Date and shall be in effect until the twentieth (20th) anniversary of the Commercial Operation Date, unless earlier terminated in accordance with this PPA.

(b) The Initial Term may be extended for two (2) periods of two (2) years each, or such period as otherwise agreed in writing by the Parties, by written request of either Party, which must be received by the other Party at least ninety (90) days prior to the end of the Initial Term or the then-current Extension Term. Any period extending beyond the Initial Term shall be an “**Extension Term**”.

(c) Unless purchased by the Buyer as provided herein, Seller shall, at Seller’s sole cost and expense, remove the Solar System from the Premises and restore the Premises to its original condition, normal wear and tear excluded, within one hundred and twenty (120) days after the expiration or termination of this PPA (such date, the “**Solar System Removal Date**”). If Seller fails to remove the Solar System from the Premises within such one hundred twenty (120) day period, Buyer may remove the Solar System, or arrange for the removal of the Solar System, at Seller’s cost and expense. Seller and its agents, consultants and Representatives shall have access to the Premises on Business Days and the Solar System for purposes of such removal pursuant to the terms of this PPA and the Lease. Seller and its agents, consultants and representatives shall have access to the Premises on Business Days and the Solar System for purposes of such removal pursuant to the terms of this PPA and the Lease.

2.3 Conditions Precedent. The obligations of Seller hereunder to install the Solar System and to sell to Buyer the Energy Output are expressly conditioned upon the satisfaction in full or waiver (by Seller) by \_\_\_\_\_, 20\_\_ (the “**CP Satisfaction Date**”) as follows:

(a) Seller and Seller’s Financing Parties shall have satisfied or waived all conditions precedent to the effectiveness of any and all Financing Documents and the initial drawdown of funds thereunder. Seller shall exercise due diligence in obtaining such approvals or waivers and shall notify Buyer within five (5) days when the condition contained in this Section 2.3(a) has been satisfied.

(b) Seller shall have obtained all consents, permits, approvals, authorizations, qualifications and orders of all Governmental Entities required in connection with this PPA and the transactions contemplated hereby (collectively, “**Governmental Approvals**”), or the applicable Government Entities shall have waived the requirement for such Governmental Approval(s), and Seller shall have presented evidence of such waiver to Buyer at Buyer’s request.

(c) Seller and/or Buyer shall have entered into all contracts and delivered all other documents required by the Utility in connection with this PPA and the transactions contemplated hereby (collectively, “**Utility Documents**”), or the Utility shall have waived the requirement for such Utility Documents, and Seller shall have presented written evidence of such waiver to Buyer at Buyer’s request; provided that Buyer shall reasonably cooperate with Seller in Seller’s efforts to enter into Utility Documents.

If all of the conditions set forth herein are not satisfied (or waived by Seller) on or prior to the CP Satisfaction Date, Seller may terminate this PPA and neither Seller nor Buyer shall have any further liability hereunder with respect to such termination, except that Seller shall be required, within thirty (30) days after the termination of this PPA, to remove any portion of the Solar System actually installed at the Premises and, if applicable, to restore the Premises to the condition it was in as of the Effective Date (normal wear and tear excluded). Buyer agrees that to the extent it is required by Utility to execute any Utility Documents in connection with the satisfaction of the condition precedent contained in Section

2.3(c) or otherwise, Buyer will not unreasonably delay, condition or withhold its execution of any such Utility Documents, and will otherwise cooperate as may be reasonably necessary in order to effectuate the transactions contemplated by such Utility Documents.

2.4 **Commercial Operation.** Subject to the provisions of this PPA and Seller’s satisfaction of any requirements imposed by the Utility, Seller: (a) shall use commercially reasonable efforts to cause the Solar System to achieve Commercial Operation by \_\_\_\_\_, 20\_\_ (the “**Forecasted Commercial Operation Date**”); and (b) shall, within five (5) Business Days after achieving Commercial Operation, notify Buyer in writing of the date on which Commercial Operation was achieved (“**Notice of Commercial Operation**”).

2.5 **Survival.** Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this PPA prior to termination of this PPA and (b) as provided in Sections 8.2 through 8.8 and Articles 9, 11, 12 (as necessary to give effect to its terms), 13, 14 and 17.

**ARTICLE 3  
PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES**

3.1 **Purchase and Sale of Energy Output; Title.** Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall deliver to Buyer, and Buyer shall take delivery of, at the Delivery Point, all of the Energy Output produced by the Solar System. The Parties acknowledge that: (a) the Energy Output from the Solar System is intermittent and will only be delivered as and to the extent available; and (b) Buyer is solely responsible for meeting any and all of its energy needs not met from Solar System generated-energy at Buyer’s cost and expense. Title to and risk of loss of the Energy Output will pass from Seller to Buyer at the Delivery Point.

3.2 **Price for Energy Output.** Buyer shall pay Seller for the Energy Output, as metered at the Utility Metering Device, or as otherwise provided in Article 6, at the following rate (the “**Energy Payment Rate**”): \$0.\_\_\_\_ per kWh of Energy Output with a \_\_\_\_% fixed annual escalation rate.

Contract Year	\$/kWh of Energy Output
1	0.____
2	0.____
3	0.____
4	0.____
5	0.____
6	0.____
7	0.____
8	0.____
9	0.____
10	0.____
11	0.____
12	0.____
13	0.____
14	0.____
15	0.____
16	0.____
17	0.____
18	0.____

19	0. ___
20	0. ___

3.3 Taxes; Governmental Charges.

(a) Seller is responsible for local, state and federal income taxes attributable to Seller for income received under this PPA.

(b) Buyer is responsible for all sales taxes attributable to the sale of Energy Output from Seller to Buyer that are imposed on the Buyer by a Governmental Entity. Any other Governmental Charges shall be borne by the Party on which they are imposed by the Governmental Entity.

(c) Both Parties shall use commercially reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Output hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, within five (5) Business Days after the other Party's request therefor (or such longer period as necessary if it is impractical to provide such information within such five (5) Business Day period), provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

**ARTICLE 4  
ENVIRONMENTAL ATTRIBUTES; TAX BENEFITS**

4.1 Environmental Attributes. Seller shall have all right, title and interest associated with the Environmental Attributes resulting from the development and installation of the Solar System.

4.2 Tax Benefits. Notwithstanding the Solar System's presence on the Premises and the purchase and sale of Energy Output pursuant to this PPA: (a) Seller intends to apply for all Tax Benefits resulting from or associated with the development and installation of the Solar System or the production, sale, purchase or use of the Energy; and (b) unless otherwise required by law, Seller shall have all right, title, and interest in and to any and all such Tax Benefits.

4.3 Further Assurances. At the requesting Party's request and expense, the other Party shall, within thirty (30) days after request from the requesting Party, execute all such documents and instruments reasonably necessary or desirable to effect or evidence the requesting Party's rights, title and interest in and to the Environmental Attributes or Tax Benefits as set forth herein. If the standards used to qualify the Environmental Attributes or Tax Benefits to which a Party is entitled under this PPA are changed or modified, the other Party shall, at such requesting Party's request and expense, use commercially reasonable efforts to cause the Environmental Attributes or Tax Benefits, as the case may be, to comply with new standards as changed or modified. Notwithstanding the foregoing, neither Party shall be required to pursue any action which: (a) results in a materially adverse impact to that Party; or (b) cannot legally be performed.

**ARTICLE 5  
CONSTRUCTION, MAINTENANCE AND MONITORING**

5.1 Construction, Maintenance and Monitoring of Solar System by Seller.

(a) Seller shall, at its sole cost and expense: (i) design, specify and construct the Solar System substantially in accordance with the Solar System Description and Specifications set forth in **Exhibit A** attached hereto (which Seller may reasonably update prior to the Forecasted Commercial Operation Date) and in accordance with Good Utility Practices; and (ii) maintain the Solar System in good condition and repair and in accordance with Good Utility Practices, requirements of applicable Laws, and the terms of this PPA and the Lease.

(b) Seller and its sub-contractors, agents and consultants shall have reasonable access on Business Days to the Premises for the purpose of installation, operation, maintenance, repair, replacement and improvement of the Solar System, and with the consent of Buyer (such consent not to be unreasonably withheld), to any documents, materials and records of Buyer relating to the Premises that are necessary to conduct these activities. Seller and its subcontractors, agents and consultants shall comply with all reasonable access and notice procedures of Buyer relating to activities conducted by or on behalf of Seller on the Premises relating to the Solar System. During any such activities, Seller, and its sub-contractors, agents and consultants, shall comply with Buyer's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Seller), and Seller and its sub-contractors, agents and consultants shall conduct such activities in such a manner and such a time and day as to minimize interference with Buyer's activities to the extent reasonably practicable. Notwithstanding anything to the contrary in this Section 5.1(b), Seller shall be allowed immediate access to the Premises and the Solar System in connection with any emergency condition then existing with respect to the Solar System that could reasonably be expected to pose an imminent threat to the safety of persons or property; provided that Seller notifies Buyer telephonically immediately once Seller becomes aware of such emergency conditions.

(c) Notwithstanding anything to the contrary in this Section 5.1 or in any other provision of this PPA, Buyer shall establish and maintain at the Premises, and make available to Seller for Seller's use at Buyer's sole cost, a functioning internet connection with a Wi-Fi enabled router that allows Seller to communicate wirelessly and/or remotely with, and receive information wirelessly and/or remotely from, the Solar System. Such internet connection must be, at a minimum, a 10/100 Mbps Ethernet connection that supports common Internet protocols (including TCP/IP and DHCP). The purpose of such internet connection is, among other things, to allow Seller to monitor the Solar System's performance. If at any time such internet connection is not operational: (i) Buyer will deliver a copy of each electric bill of Buyer covering any portion of such period of non-operation; and (ii) Seller will reasonably estimate the Solar System's production using, among other things, such electric bills for billing purposes until such time as such internet connection is again operational.

## 5.2 Buyer's Use and Maintenance or Property.

(a) Nothing in this PPA shall limit Buyer's ability to maintain and use the property adjacent to or near the Premises in a reasonable manner consistent with Buyer's current and past uses or activities, so long as such maintenance or use does not shade the Solar System or reduce the amount of insolation the Solar System can receive, or otherwise adversely impact the Solar System's ability to produce Energy Output. Seller shall be obligated to maintain the Premises as further provided in the Lease.

(b) The Buyer shall periodically (but no less than monthly) assess, through visual inspection, whether any person that owns or occupies, or has the right to occupy, any real property located adjacent to the Premises (any such person, a "**Neighbor**") has engaged, is engaging, or will be engaging in any activities, including construction or landscaping activities, that could shade the Solar System or reduce the amount of insolation that the Solar System can receive (collectively, "**Shading Activities**"). If Buyer knows or discovers that any Neighbor has engaged, is engaging, or will be engaging in any

Shading Activity, then the Buyer: (x) shall notify Seller promptly in writing of such Shading Activity (which notice shall include a reasonable description of such Shading Activity); and (y) shall use commercially reasonable efforts to ensure that such Neighbor ceases engaging, or does not engage, in such Shading Activity.

## **ARTICLE 6 METERING DEVICE AND METERING**

6.1 Metering Equipment. Seller shall be responsible, at its sole expense, for installing the Metering Device in accordance with Good Utility Practices. Such Metering Device shall be used to determine the quantity of Energy Output generated by the Solar System and delivered to the Delivery Point. Seller shall be solely responsible for operating, maintaining, and repairing the Metering Device at its own expense throughout the Term of this PPA. Seller shall inspect and test the Metering Device upon its installation and as set forth in Section 6.3 below.

6.2 Measurements. Except as otherwise provided in this Section 6.2, readings of the Metering Device shall be conclusive as to the amount of Energy Output generated by the Solar System. If the Metering Device is out of service or is discovered to be inaccurate by more than two percent (2%), then measurements of Energy Output shall be determined to the extent practical by reference to any metering equipment maintained by the Utility for the Premises. If obtaining metering data from any such Utility metering equipment is impractical, then accounts and invoices for Energy Output covering the period of time since the last test of such Metering Device will be adjusted for the amount of the inaccuracy based on the assumption that the inaccuracy occurred immediately following the last valid Metering Device test. Adjustments for Energy Output shall be made in accordance with Section 6.3 and will be reflected on the invoice following the date the inaccuracy was discovered.

6.3 Testing and Correction. Seller shall conduct at least one test every five (5) years to verify the accuracy of the measurements and recordings of the Metering Device. Seller shall notify Buyer within five (5) Business Days after receiving the results of any such test if such test reveals that the Metering Device is inaccurate by more than two percent (2%) per year. Buyer may, not more than twice in any twelve (12) month period, request that Seller conduct a test of the Metering Device to verify its accuracy. Buyer shall reimburse Seller on demand for the documented, out-of-pocket costs incurred by Seller in order to conduct any such test requested by Buyer; provided that the Metering Device is accurate within two percent (2%) on an annual basis. Buyer and its consultants and representatives shall have the right to witness any test of the Metering Device. Seller shall provide at least ten (10) days' prior notice to Buyer of the date upon which any such test is to occur. Seller shall provide Buyer with the results of any such test no later than twenty (20) days after completion of such test.

## **ARTICLE 7 SOLAR SYSTEM OWNERSHIP; RISK OF LOSS; INSURANCE; FORCE MAJEURE; CHANGE IN LAW**

7.1 Solar System Ownership. Notwithstanding the Solar System's presence and operation on the Premises, Seller shall at all times retain title to and be the legal and beneficial Seller of the Solar System and all alterations, additions or improvements made thereto by Seller, and the Solar System shall remain the personal property of Seller or Seller's assigns, except as otherwise provided for in Article 12, and Seller shall have the right to remove the Solar System from the Premises in accordance with the terms of this PPA. In no event shall anyone claiming by, through or under Buyer (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Solar System at any time, except as otherwise provided in this PPA. Buyer acknowledges and agrees that Seller may be required to grant or cause to be granted to Seller's Financing Parties a security interest in the Solar System and Buyer

expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights it may have in the Solar System, from time to time, pursuant to this PPA, at law or in equity. Except as provided in Article 12, nothing in this PPA shall be construed to convey to either Party a license or other right to trademarks, copyrights, technology or other intellectual property of the other Party or associated with the Solar System.

## 7.2 Solar System Loss.

(a) Seller shall bear the risk of any Solar System Loss excluding, however, the proportional Solar System Loss attributable to the negligence or reckless or intentional misconduct of Buyer or Buyer's agents, representatives, vendors or contractors (but excluding Seller and any vendors or contractors hired by Seller), employees or invitees (collectively, "**Buyer Misconduct**"). To the extent any Solar System Loss has been caused by Buyer Misconduct, Buyer shall within thirty-five (35) days from written notice by Seller, pay all reasonable damages, costs, loss of Tax Benefits and expenses arising in connection with such Solar System Loss, including, without limitation, cost of repair and lost revenues under this PPA; provided that Seller provides Buyer with all documentation reasonably requested by Buyer that reflects such damages, costs, and expenses.

(b) Subject to the terms and conditions of the Financing Documents, in the event of any Solar System Loss prior to the end of the fifth (5th) year of the Term, this PPA will remain in full force and effect and Seller will, at Seller's sole cost and expense, repair or replace the Solar System as quickly as practicable. In the event of any Solar System Loss after the fifth (5th) year of the Term, this PPA will remain in full force and effect and Seller will, at Seller's sole cost and expense, repair or replace the Solar System as quickly as practicable, but only to the extent such Solar System Loss is caused by the negligence or reckless or intentional misconduct of Seller or Seller's agents, representatives, vendors or contractors (collectively, "**Seller Misconduct**"). If any such Solar System Loss occurring after the fifth (5th) year of the Term is caused by any event other than Seller Misconduct and the Host has not cured the Solar System Loss within 90 days of written notice from the Seller, then Seller may terminate this Agreement and neither party shall have any further obligation hereunder.

7.3 Insurance Requirements. At all times during the Term, Buyer shall maintain the following insurance in full force and effect throughout the Term, with an insurance company with an A.M. Best rating of A-VII or better:

(a) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 per annual aggregate, which policy shall name Seller as an additional insured; provided that the above minimum limits may also be satisfied through a combination of primary liability coverage and umbrella or excess liability coverage;

(b) Workers' Compensation insurance to the extent and as required by applicable law; and

(c) property insurance covering risk of loss or damage to the Solar System with a coverage limit at least equal to the Solar System's functional replacement cost, which policy shall name Seller as loss payee and shall waive any right of subrogation against Seller unless any loss or damage to the Solar System is caused by Seller's gross negligence or intentional misconduct.

Each insurance policy that Buyer is obligated to maintain under this Section 7.3 shall provide that the insurer under such insurance policy will give Seller at least thirty (30) days' prior written notice of any amendment to or cancellation of such insurance policy. Buyer shall promptly provide to Seller certificates of insurance evidencing that the insurance required hereunder is in full force and effect.

7.4 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable after the Force Majeure first prevents performance by the Claiming Party, then the Claiming Party will be excused from the performance of its obligations under this PPA (other than the obligation to make payment then due or becoming due under this PPA). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations under this PPA; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues. Disputes regarding claims of Force Majeure shall be resolved in accordance with Article 14.

7.5 Change in Law. In the event of any material change in Law that results in this PPA becoming illegal or impossible to perform, the Parties shall work in good faith to amend the provisions of this PPA within twenty (20) Business Days after such alteration, or such other timeframe as agreed in writing by the Parties, as may be reasonably necessary to eliminate such illegality or impossibility to the extent possible.

## ARTICLE 8 EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. An “**Event of Default**” means, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(a) any representation or warranty made by such Party in this PPA is false or misleading in any material respect when made or when deemed made or repeated if such breach is not cured or remedied (including by payment of money to the Non-Defaulting Party within thirty (30) days after receipt of written notice from the Non-Defaulting Party;

(b) such Party’s failure to make, when due, any payment required under this PPA if such failure is not remedied within ten (10) days after receipt of written notice from the Non-Defaulting Party;

(c) such Party’s failure to perform any material covenant or obligation set forth in this PPA (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party; provided that so long as the Non-Defaulting Party has initiated and is diligently attempting to effect a cure, such cure period shall be extended for an additional period not to exceed ninety (90) days, or such other timeframe as agreed to in writing by the Parties;

(d) such Party becomes Bankrupt;

(e) with respect to Buyer, a “Lessor” “Event of Default” (as those terms are defined in the Lease) shall have occurred and be continuing under the Lease; and

(f) with respect to Seller, a “Lessee” “Event of Default” (as those terms are defined in the Lease) shall have occurred and be continuing under the Lease.

8.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the Non-Defaulting Party may: (a) pursue applicable remedies or damages at law or equity;



and/or (b) with notice to the Defaulting Party, designate a date, not earlier than twenty (20) Business Days after the date such notice is effective, as an early termination date in respect of this PPA (an “**Early Termination Date**”). The Non-Defaulting Party shall have the right, as of the date of the notice designating an Early Termination Date: (x) to withhold any payments due to the Defaulting Party under this PPA; (y) suspend performance due to the Defaulting Party under this PPA; and (z) exercise its options under Section 8.3 as to Buyer and Section 8.4 as to Seller.

8.3 Buyer Rights Upon Termination for Default. In the event that Buyer is the Non-Defaulting Party, and Buyer elects to terminate this PPA as provided in Section 8.2, Buyer will be entitled, at its sole and exclusive option and in its sole and absolute discretion, to:

(a) require Seller to remove the Solar System within one hundred and twenty (120) days of Buyer’s notice of early termination; or

(b) exercise the Purchase Option provided in Article 12 as follows:

(i) if the Purchase Option is exercised prior to the end of the fifteenth (15th) Contract Year, at the greater of: (A) the Fair Market Value; or (B) the Termination Payment as specified in **Exhibit C**; and

(ii) if the Purchase Option is exercised after the end of the fifteenth (15th) Contract Year, at the Fair Market Value.

In the event that Buyer elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Buyer as a result of termination of this PPA subject, however, to Sections 8.6 through 8.8 below, and Seller’s liability shall be limited as set forth in this Section 8.3, and all other remedies or damages at law or in equity are waived by Buyer.

8.4 Seller Rights Upon Termination for Default. In the event that Seller is the Non-Defaulting Party prior to the end of the Initial Term, and Seller elects to terminate this PPA as provided in Section 8.2, Buyer shall pay the Termination Payment to Seller pursuant to Section 8.5. In the event that Seller elects the foregoing remedy, such express remedy shall be the sole and exclusive remedy available to Seller as a result of termination of this PPA subject, however, to Sections 8.6 through 8.8 below, and Buyer’s liability shall be limited as set forth in this Section 8.4, and all other remedies or damages at law or in equity are waived by Seller.

8.5 Termination Payment Notice. In the event that the Termination Payment is owed to Seller as provided in Section 8.4, then within thirty (30) days of Seller’s notice of early termination, Seller will provide Buyer with notification of: (a) the Termination Payment as specified in **Exhibit C**; and (b) any amount otherwise due and outstanding under this PPA. Such notice will include a written statement identifying the applicable amount from **Exhibit C** and explaining in reasonable detail the calculation of otherwise due and outstanding amounts. Buyer shall be required to pay the Termination Payment and any amount otherwise due and outstanding under this PPA to Seller within thirty (30) days after the receipt of such notice, unless Buyer, prior to such date and in its sole discretion, delivers a written notice to Seller exercising its Purchase Option under Article 12, in which case the Parties shall follow the procedures and time frames set forth in Article 12.

8.6 Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this PPA and the Lease.

8.7 Remedies Cumulative. Except as provided in Sections 8.3 and 8.4, the rights and remedies contained in this Article 8 are cumulative with the other rights and remedies available under this PPA or at law or in equity. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this PPA.

8.8 Unpaid Obligations. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 9 INVOICING AND PAYMENT**

9.1 Invoicing and Payment. Unless otherwise provided, all invoices under this PPA will be due and payable not later than thirty-five (35) days after receipt of the applicable invoice and invoices shall be billed in arrears on a monthly basis. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated in writing by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate beginning on the day after such payment is due until paid in full. All payments hereunder shall be made through the Automated Clearing House (ACH) network to the bank account designated by the invoicing Party in the applicable invoice.

9.2 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this PPA at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered, except for disputes arising from or related to the accuracy of the Metering Devices, in which case such disputes shall be covered under Article 6. In the event that either Party disputes any invoice or invoice adjustment, such Party will pay the undisputed amount of the applicable invoice or invoice adjustment on the applicable payment due date, except as otherwise expressly provided in this PPA, and give notice of the objection to the other Party. Any disputed payment found to be required will be made within thirty-five (35) days after resolution of the applicable dispute and shall not accrue interest at the Late Payment Interest Rate if paid within such period. Payments not made within such period will accrue interest at the Late Payment Interest Rate beginning after such period ends.

9.3 Netting and Setoff. The Parties will net and setoff any and all undisputed mutual debts and payment obligations that are due and owing under this PPA and the Lease. Accordingly, all amounts owed by each Party to the other Party under this PPA and the Lease, including any related damages and any applicable interest, payments or credits, will be netted such that only the excess amount remaining due will be paid by the Party that owes it.

9.4 Records and Audits. Each Party will keep, for a period not less than seven (7) years, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments relating to this PPA. During such period each Party may, at its sole cost and expense, and upon ten (10) days' notice to the other Party, examine such records pertaining to this PPA during such other Party's normal business hours.

9.5 Currency. All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

**ARTICLE 10**  
**REPRESENTATIONS AND WARRANTIES;**  
**BUYER ACKNOWLEDGEMENT**

10.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants as follows:

(a) the execution, delivery and performance of this PPA are within its power and authority, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

(b) this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) it is acting for its own account, and has made its own independent decision to enter into this PPA, is not relying upon the advice or recommendations of the other Party in so doing, is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this PPA, and understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates;

(d) there is no pending or, to the knowledge of the disclosing Party, threatened litigation, action or proceeding against the disclosing Party which could reasonably be expected to have a material adverse effect on the disclosing Party or its ability to perform its obligations under this PPA or the Lease or which purports to affect the legality, validity or enforceability of this PPA or the transactions contemplated hereby;

(e) there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to the disclosing Party; and

(f) to the disclosing Party's knowledge there are no facts, circumstances or other matters that may interfere with or unduly delay the construction, installation or operation of the Solar System.

10.2 Bankruptcy Code Section 366. Buyer acknowledges and agrees that, for purposes of this PPA, Seller is not a "utility" as such term is used in Section 366 of Title II of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

**ARTICLE 11**  
**INDEMNITY; LIMITATIONS**

11.1 Indemnity. To the fullest extent permitted by applicable Law, each Party (the "**Indemnitor**") hereby indemnifies and agrees to defend and hold harmless the other Party and its Affiliates, respective officers, directors, officers, employees and agents (the "**Indemnitee**") from and against any and all third-party Indemnity Claims, caused by or resulting from: (a) any breach of this PPA or the Lease by the Indemnitor or any of its directors, officers, employees or agents; or (b) any negligence or reckless or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees, Representatives, or agents; provided, however, that the Indemnitor will not have any

obligation to indemnify the Indemnitee from or against any Indemnity Claims to the caused by or resulting from any breach of this PPA or the Lease by the Indemnitor or any of its directors, officers, employees, Representatives, or agents, or any negligence or intentional misconduct on the part of the Indemnitee or any of its directors, officers, employees or agents.

11.2 LIMITATION OF REMEDIES, LIABILITY AND DAMAGES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS PPA SATISFY THE ESSENTIAL PURPOSES HEREOF. WITHOUT LIMITATION OF THE INDEMNITY PROVISIONS IN THIS PPA, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. WITHOUT PREJUDICE TO THE CALCULATION OF ANY TERMINATION PAYMENT OR AMOUNTS OWING UNDER SECTIONS 7.3, 8.3 AND 8.4, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST SAVINGS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL THE FOREGOING LIMITATIONS OF LIABILITY BE APPLIED TO LIMIT THE EXTENT OF THE LIABILITY OF EITHER PARTY TO THE OTHER FOR INTENTIONAL MISCONDUCT OR FOR OR WITH RESPECT TO ANY THIRD-PARTY INDEMNITY CLAIMS. THE LIMITATIONS IMPOSED HEREIN ON REMEDIES AND THE MEASURE OF DAMAGES ARE WITHOUT REGARD TO THE APPLICABLE CAUSE OR CAUSES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

11.3 LIMITATION ON WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS PPA, EACH PARTY HEREBY DISCLAIMS ANY AND ALL GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE 12 SOLAR SYSTEM PURCHASE OPTION

12.1 Grant of Purchase Option. For and in consideration of the payments made by Buyer under this PPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Seller hereby grants Buyer the option to purchase all of Seller's right, title and interest in and to the Solar System on the terms set forth in this PPA (the "**Purchase Option**"). The Purchase Option shall be irrevocable by Seller and may be exercised by Buyer only during the Exercise Period (as defined below) following a Final Determination (as defined below) related to a valuation performed pursuant to this Article 12. It is the Parties' mutual intent in entering into this PPA that the Purchase Option be non-executory in nature and upon either Party becoming Bankrupt shall be enforceable by the non-Bankrupt Party in accordance with the terms of this Article 12.

12.2 Buyer Request for Appraisal of Solar System Value. Buyer shall have the right, but only on the seventh (7th) anniversary of the Commercial Operation Date and on each anniversary of the Commercial Operation Date thereafter, to provide a notice to Seller requiring a determination of the Fair

Market Value of the Solar System in accordance with this Article 12 (an “*Appraisal*”). An Appraisal shall also be conducted if requested in any notice delivered: (a) by Buyer under Section 8.2 following any Event of Default with respect to Seller; or (b) by Buyer under and in accordance with Section 8.5. Promptly following receipt of Buyer’s notice, Seller shall make the Solar System, including records relating to the operations, maintenance, warranties and warranty repairs, available to Buyer for its inspection during normal business hours.

12.3 Selection of Independent Appraiser. Within twenty (20) Business Days of receipt of a notice of Appraisal provided under Section 12.2, Seller and Buyer shall each choose its own Independent Appraiser and shall notify each other in writing of each Party’s respective designation of an Independent Appraiser. Each designated Independent Appraiser shall perform the Appraisal in accordance with Section 12.4. If both Buyer and Seller agree, the parties may hire one Independent Appraiser.

12.4 Determination of Fair Market Value.

(a) Each Party’s Independent Appraiser shall, within twenty (20) Business Days of the written notice of appointment in Section 12.3, make a preliminary determination of the Fair Market Value of the Solar System (the “*Preliminary Determination*”).

(b) Within five (5) Business Days after the deadline for the Preliminary Determination in Section 12.4(a), each Party shall provide the other Party a copy of the Preliminary Determination from its Independent Appraiser, together with all supporting documentation that details the calculation of the Preliminary Determination. Each Party shall have the right to object to the other Party’s Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within five (5) Business Days after the expiration of such ten (10) Business Day period, each Party shall send the other Party its Independent Appraiser’s final determination (the “*Final Determination*”), which shall specifically address the objections received by each respective Independent Appraiser and whether such objections were taken into account in making its Final Determination. Except in the case of fraud or manifest error, the Final Determination of each Independent Appraiser shall be final and binding on the Parties.

(c) Calculation of Purchase Price. The purchase price payable by Buyer for the Solar System shall be the greater of: (i) the average of the determinations of Fair Market Value by each Party’s Independent Appraiser, unless otherwise agreed to in writing by the Parties; or (ii) the Termination Payment for the Contract Year in which the Purchase Option is exercised, as specified in **Exhibit C**, unless otherwise agreed to in writing by the Parties. The applicable value shall be the “*Purchase Price*”.

12.5 Costs and Expenses of Independent Appraiser. Each Party shall each bear its own costs and expenses for its respective Independent Appraiser for the first Appraisal, and for any Appraisal ordered as a result of an Event of Default by either the Buyer or the Seller. If Buyer requests any other Appraisals, Buyer shall be responsible for, and shall pay Seller on demand for, the costs incurred by Seller in connection with Seller’s engagement of an Independent Appraiser for such Appraisal.

12.6 Exercise of Purchase Option. Buyer shall have fifteen (15) Business Days from the date of the Final Determination (such period, the “*Exercise Period*”), to exercise the Purchase Option at the Purchase Price. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an “*Exercise Notice*”) to Seller. Once Buyer delivers its Exercise Notice to Seller, such exercise shall be irrevocable unless additional information is obtained that has a materially adverse impact on the value of the Solar System.

12.7 Terms of Solar System Purchase. On the Transfer Date (as defined below):

(a) Seller shall surrender and transfer to Buyer, on an as-is, where-is basis, all of Seller's right, title and interest in and to the Solar System, including all warranties provided by subcontractors or suppliers of Seller for the Solar System;

(b) Buyer shall pay the Purchase Price, by certified check, bank draft or wire transfer, and shall assume all liabilities arising from or related to the Solar System from and after the Transfer Date;

(c) both Parties shall: (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Solar System in Buyer; and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the Solar System to Buyer; and

(d) this PPA shall terminate, subject to Section 2.5.

12.8 Transfer Date. The closing of any sale of the Solar System (the "**Transfer Date**") pursuant to this Article 12 will occur no later than twenty (20) Business Days following the date on which the Independent Appraiser issues the Final Determination, unless otherwise extended in writing by the Parties.

### **ARTICLE 13 CONFIDENTIALITY**

13.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party's performance under this PPA. Furthermore, neither Party will disclose any Confidential Information to any third party other than: (i) for purposes permitted by this PPA, the Party's or its Affiliates' officers, employees, counsel, accountants or advisors (collectively, "**representatives**") who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein); or (ii) in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; provided, however, that each Party will use reasonable efforts to prevent or limit any such disclosure and notify the non-disclosing Party prior to such disclosure. Notwithstanding the foregoing, Seller may disclose Confidential Information to its lenders, potential lenders, and potential equity investors in connection with any potential financing or refinancing of the Solar System who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein).

(b) The confidentiality obligations herein shall not apply, however, to any part of the Confidential Information which: (i) is in the public domain or hereafter comes into the public domain other than as a result of a breach of this PPA, or is explicitly approved for release by written authorization of the disclosing Party; (ii) was known to the receiving Party at the time of disclosure, without restrictions in disclosure, as shown by written records in existence at the time of disclosure; (iii) was lawfully obtained by the receiving Party without breach of this PPA and otherwise not in violation of the disclosing Party's rights; and (iv) is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority or any recognized stock

exchange, to be disclosed; provided that to the extent permitted by law, prior to any such disclosure being made, the receiving Party shall notify and consult with the disclosing Party as to the proposed form, nature and purpose of the disclosure.

(c) The obligations of the Parties under this Article 13 will survive the termination of this PPA.

#### **ARTICLE 14 DISPUTE RESOLUTION AND ARBITRATION**

14.1 The Parties, through their respective authorized representatives, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this PPA (a “*Dispute*”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party

14.2 If, after such negotiation in accordance with Section 14.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Parties’ respective authorized representatives shall meet with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then the Parties shall request the appointment of a mediator by the American Arbitration Association. The mediator’s fee and expenses shall be paid one-half by each Party.

14.3 In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 14.1 or 14.2, both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

14.4 All mediations pursuant to Section 14.2 shall be held in New York County, State of New York. Any legal action or proceeding brought by either of the Parties against the other Party with respect to this PPA or the transactions in connection with or relating hereto, shall be brought in the courts of New York County, State of New York and, by execution and delivery of this PPA, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

#### **ARTICLE 15 NOTICES**

15.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices may be delivered by first class mail, hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received). Notice by first class mail will be deemed to have been received on the third (3rd) Business Day after the postmarked date of the notice. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will

be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received.

To Seller: \_\_\_\_\_, LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_

To Buyer: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_, New York, NY 100\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

## ARTICLE 16 ASSIGNMENT; FINANCING

16.1 Assignment. Neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this PPA without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may assign any of its rights, duties or obligations under this PPA: (a) to one or more of its Affiliates; (b) to any Qualified Person succeeding to all or substantially all of the Collaterally Assigned Assets; (c) to a successor entity in a merger or acquisition transaction; or (d) to one or more Financing Parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction. Any purported assignment or transfer of this PPA not in accordance with the above requirements shall be null and void. Subject to the foregoing restrictions on assignment, this PPA will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

### 16.2 Financing.

(a) In connection with an assignment pursuant to Section 16.1(d), Seller may pledge its interest in this PPA, including any rights to payment, and the Solar System, to one or more Financing Parties as security in connection with a sale-and-leaseback or other debt and/or equity financing transaction. If any such Financing Party requests any amendments or clarifications to the terms and conditions of this PPA, Buyer agrees to consider any such requests in good faith.

(b) Buyer acknowledges that Seller will be financing the development, acquisition, installation and/or operation of the Solar System with financing accommodations from one or more Financing Parties and that Seller's obligations thereunder will be secured by a pledge or collateral assignment of this PPA, Seller's rights to payment hereunder, and Seller's interest in the Solar System (the "*Collaterally Assigned Assets*"). In order to facilitate such necessary financing, Buyer agrees that:



(i) Buyer has been advised that part of the collateral securing financial accommodations of Seller is granting of a first priority security interest in the Solar System to Seller's Financing Parties to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Premises;

(ii) Buyer agrees to any such filings described in clause (i) above so long as: (A) such filings reflect the Parties' agreement that any filing to perfect or provide notice of such security interest clearly document the Parties' intent that the Solar System is considered personal property only and is not considered a fixture to the Premises; and (B) Seller causes any such filings to be terminated promptly following the termination of this PPA; and

(iii) Buyer shall reasonably cooperate with Seller and Seller's Financing Parties in connection with any such financing for the Solar System, including without limitation by: (A) furnishing such information, including but not limited to publicly available financial information, as may be reasonably requested by Seller or Seller's Financing Parties; and (B) entering into one or more direct agreements with a Financing Party that, among other things: (I) allows such Financing Party reasonable notice of and opportunity to cure Seller's defaults hereunder, including customary extended cure periods; (II) allows such Financing Party or its designee to be assigned all of Seller's rights hereunder and in such Collaterally Assigned Assets in the event of Seller's default hereunder, with the right to reassign such rights to a competent replacement Seller; (III) obligates Buyer to enter into a replacement agreement at the request of the Financing Party if this PPA is rejected in bankruptcy or is similarly terminated; and (IV) allows for other customary lender-protective provisions that are not in violation of applicable laws or regulations.

## **ARTICLE 17 MISCELLANEOUS**

17.1 Governing Law. THIS PPA AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

17.2 Entire Agreement; Amendments. This PPA (including the exhibits, schedules and any written supplements or amendments) and the Lease constitute the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this PPA, in order to be effective any amendment, modification or change to this PPA must be in writing and executed by both Parties.

17.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing by the waiving Party. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, shall be construed, operate as or constitute a consent to, waiver of or excuse of any other or subsequent or succeeding breach by either Party.

17.4 Severability. If any part, term, or provision of this PPA is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal,

enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this PPA will remain in full force and effect.

17.5 No Third Party Beneficiaries. Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Financing Parties to the extent expressly provided herein.

17.6 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender (other than following a foreclosure by any of Financing Parties in its security interest in this PPA in accordance with the provisions set forth in any direct agreement entered into in accordance with Section 16.3), director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

17.7 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

17.8 Counterparts. This PPA may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

17.9 Further Assurances.

(a) The Parties acknowledge that adjustments in the terms and conditions of this PPA may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, that could not be anticipated at the date of execution of this PPA or that are beyond the control of the Parties. As long as the Parties are able to reach mutual agreement, the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

(b) As long as the Parties are able to reach mutual agreement, the Parties shall, at their own cost and expense, do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to evidence or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

17.10 General Interpretation. The terms of this PPA have been negotiated by the Parties hereto and the language used in this PPA shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This PPA shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the PPA. No rule of strict construction will be applied against any Person.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this PPA to be duly executed as of the day and year first set forth above.

\_\_\_\_\_, LLC,  
a \_\_\_\_\_ limited liability company,  
as ***Seller***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Agent

\_\_\_\_\_,  
as ***Buyer***

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

**EXHIBIT A**

**SYSTEM DESCRIPTION AND SPECIFICATIONS**

The Solar System description below is a summary of design specifications, subject to reasonable change (with Buyer's approval, such approval not to be unreasonably withheld, delayed, or conditioned) based upon final engineering, permitting and manufacturer's product availability. Seller is responsible for delivery of all components in a complete and functioning system, fully engineered and permitted, including compliance with the requirements of this PPA.

**Solar Array and Equipment**

The Solar System is an array to be located at \_\_\_\_\_, \_\_\_\_\_, New York, NY 100\_\_.

Total System Size: \_\_\_\_\_ kW-DC STC (Standard Test Conditions).

Specified Equipment:

**PV Modules:** ( ) \_\_\_\_\_ modules ( )

**Inverters:** \_\_\_\_\_ (208V)

**Balance of System and Services:**

All required balance of system components for a complete and functioning electrical generation system, that routes power to the inverters and then to the existing electrical service.

**EXHIBIT B**

**DESCRIPTION OF PREMISES**

The roof of the building located at \_\_\_\_\_, New York, NY.

EXHIBIT C

**TERMINATION PAYMENT**

The Termination Payment in connection with any termination of the PPA shall be the amount set forth in the table below that corresponds to the time period in which such termination of the PPA occurred.

<b>Contract Year</b>	<b>\$/watt of Total System Size</b>	<b>Termination Payment</b>	<b>Notes</b>
1	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs*
2	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
3	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
4	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
5	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
6	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
7	\$ .	\$	<i>plus</i> Tax Credit Recapture Costs
8	\$ .	\$	
9	\$ .	\$	
10	\$ .	\$	
11	\$ .	\$	
12	\$ .	\$	
13	\$ .	\$	
14	\$ .	\$	
15	\$ .	\$	
16	\$ .	\$	
17	\$ .	\$	
18	\$ .	\$	
19	\$ .	\$	
20	\$ .	\$	

*\* Tax Credit Recapture Costs – The Termination Payment in Contract Years 1 through 6 will be increased to reimburse Seller for: (x) the value of any tax credits that Seller must forfeit or repay as a result of the termination of the PPA or the sale of the Solar System; and (y) any reasonable and documented costs incurred by Seller to effect such forfeiture or repayment of tax credits.*

## EXHIBIT D

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. **Definitions.** The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

**“Affiliate”** means, with respect to any entity, such entity’s general partner or manager, or any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

**“Bankrupt”** means that a Party or other entity (as applicable): (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (g) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets except for, with respect to Seller, any enforcement of rights by Financing Parties pursuant to the Financing Documents; (h) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

**“Claiming Party”** shall have the meaning ascribed to it in Section 7.4 of the PPA.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commercial Operation”** means that the Solar System is ready for regular, daily operation, has been connected to the Premises electrical system, has undergone testing as provided herein, is in compliance with applicable Laws in all respects, is capable of producing Energy Output and Seller or Buyer, as applicable, shall have confirmed in writing that the Conditions Precedent in Section 2.3 have been satisfied or waived.

**“Commercial Operation Date”** means the first day on which the Solar System is ready for Commercial Operation as certified in writing by Seller to Buyer in the Notice of Commercial Operation.

**“Confidential Information”** means any and all information of any kind, whether in written or electronic format, oral or otherwise, and whether or not labeled as “Confidential”, including without limitation, information for the purpose of or in connection with the negotiation or performance of this

PPA, the Lease and all information of any kind relating to either Party, which is disclosed, submitted or otherwise made available by or on behalf of one Party to the other, whether before or after the date of this PPA.

**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Defaulting Party”** shall have the meaning ascribed to it in Section 8.1 of the PPA.

**“Delivery Point”** means the agreed location or locations where Energy Output is to be delivered and received under this PPA, and specifically the electrical tie-in point(s) between the Solar System and Buyer’s electrical system.

**“Dispute”** shall have the meaning ascribed to it in Section 14.1 of the PPA.

**“Early Termination Date”** shall have the meaning ascribed to it in Section 8.2 of the PPA.

**“Effective Date”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Energy”** means electric energy (alternating current, expressed in kilowatt-hours).

**“Environmental Attributes”** means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; Regional Greenhouse Gas Initiative (“RGGI”) attributes; greenhouse gas or emissions reductions, credits, offset, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, ancillary services, or other power attributes associated with the provision of electricity services.

**“Event of Default”** shall have the meaning ascribed to it in Section 8.1 of the PPA.

**“Exercise Notice”** shall have the meaning ascribed to it in Section 12.7(a) of the PPA.

**“Exercise Period”** shall have the meaning ascribed to it in Section 12.7(a) of the PPA.

**“Extension Term”** shall have the meaning ascribed to it in Section 2.2(b) of the PPA.

**“Fair Market Value”** means the value of the Solar System in place and on an “as is, where is” basis, as determined by an Independent Appraiser in accordance with Article 12.

**“Final Determination”** shall have the meaning ascribed to it in Section 12.4(b) of the PPA.

**“Financial Statements”** means with respect to a Party, such Party’s most recently available unaudited balance sheet and statement of income and cash flows as of a previous fiscal quarter and such Party’s most recently available audited statement of income and of cash flows, each prepared in accordance with generally accepted accounting principles (GAAP).

**“Financing Documents”** means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements,



and any other documents relating to the development, bridge construction or the permanent financing for the Solar System, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered into from time to time.

***“Financing Parties”*** means any Persons, and their permitted successors and assignees, providing funding in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for the Solar System.

***“Force Majeure”*** means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a “Force Majeure” event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing, Force Majeure shall not be based on (a) either Party’s delay or inability to obtain financing, or other economic hardship of any kind; (b) either Party’s inability to economically use the Solar System; (c) loss or failure of materials or equipment for the Solar System unless such loss or failure is caused by an event that would otherwise qualify as a Force Majeure event hereunder; (d) Seller’s inability economically to sell the RECs generated hereunder or to pay amounts owed hereunder or other economic hardship of any kind; (e) Buyer’s inability economically to use Energy purchased hereunder or to pay amounts owned hereunder or (f) Seller’s ability to sell Energy at a price greater than the price of Energy Output under this PPA or inability to economically sell Energy produced hereunder to Buyer.

***“Forecasted Commercial Operation Date”*** shall have the meaning ascribed to it in Section 2.4 of the PPA.

***“Good Utility Practices”*** means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the renewable energy electric power generation industry in the applicable region of the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, good business practices and expedition. Good Utility Practices are not intended to be limited to the optimum practice, method or act to the exclusion of others.

***“Governmental Approvals”*** shall have the meaning ascribed to it in Section 2.3(b) of the PPA.

***“Governmental Charges”*** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy Output or this PPA.

**“Governmental Entity”** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

**“Buyer”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Buyer Misconduct”** shall have the meaning ascribed to it in Section 7.2(a) of the PPA.

**“Indemnitee”** shall have the meaning ascribed to it in Section 11.1 of the PPA.

**“Indemnitor”** shall have the meaning ascribed to it in Section 11.1 of the PPA.

**“Indemnity Claims”** means all losses, liabilities, damages, costs, expenses and reasonable attorneys’ fees, whether incurred by settlement or otherwise, related to injury to persons or damage to property.

**“Independent Appraiser”** means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Solar System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Seller or any Affiliate of Seller or Buyer or any Affiliate of Buyer, or have any familial relationship with any director, officer or employee of Seller or Buyer.

**“Initial Term”** shall have the meaning ascribed to it in Section 2.2(a) of the PPA.

**“Late Payment Interest Rate”** means the per annum rate of six (6) percent interest.

**“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this PPA or the transaction contemplated hereby.

**“Lease”** means the Solar Site Lease Agreement by and between the Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

**“Metering Device”** means the utility-grade meter, data processing equipment and software owned and installed by Seller used to measure the quantity of Energy Output generated by the Solar System and delivered to the Delivery Point.

**“Neighbor”** shall have the meaning ascribed to it in Section 5.2(b) of the PPA.

**“Non-Defaulting Party”** shall have the meaning ascribed to it in Section 8.1(a) of the PPA.

**“Notice of Commercial Operation”** shall have the meaning ascribed to it in Section 2.4 of the PPA.

**“Seller”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Parties”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Party”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

**“PPA”** shall have the meaning ascribed to it in the preamble of the PPA.

**“Preliminary Determination”** shall have the meaning ascribed to it in Section 12.4(a) of the PPA.

**“Premises”** shall have the meaning ascribed to it in Recital A of the PPA.

**“Purchase Option”** shall have the meaning ascribed to it in Section 12.1 of the PPA.

**“Purchase Price”** shall have the meaning ascribed to it in Section 12.5 of the PPA.

**“Qualified Person”** means any person, entity, foundation, or organization that: (a) provides or financially supports access to renewable energy or energy efficiency technologies for low-income and moderate-income individuals on a no-cost, low-cost, or subsidized basis; and (b) agrees to own and operate the Solar System consistent with the principles set forth in clause (a).

**“Renewable Energy”** means energy derived from resources that are regenerative or for all practical purposes cannot be depleted. Resources that qualify as Renewable Energy include moving water (hydro, tidal and wave power) thermal gradients in ocean water, wind, solar power, geothermal, hydropower, landfill gas, various other forms of biomass, and municipal solid waste.

**“Renewable Energy Credits”** means: (i) the Environmental Attributes associated with the generation of power from a Renewable Energy resource and (ii) the REC Reporting Rights arising therefrom or connected therewith. One (1) REC represents the Environmental Attributes and REC Reporting Rights associated with one (1) MWh generated from one (1) or more Renewable Energy sources.

**“Reporting Rights”** means the right of the respective Party to report to any Governmental Entity, utility or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that the Party owns the Environmental Attributes or the Tax Benefits, as the case may be as provided in this PPA, associated with the Energy Output.

**“Representatives”** shall have the meaning ascribed to it in Section 13.1(a) of the PPA.

**“Shading Activities”** shall have the meaning ascribed to it in Section 5.2(b) of the PPA.

**“Solar System”** means the solar electric generating facility, including the Solar System Assets, that produces the Energy Output sold and purchased under this PPA.

**“Solar System Assets”** means each and all of the assets of which the Solar System is comprised, including Seller’s solar energy panels, mounting systems, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and

other tangible and intangible assets, permits, warranties, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Solar System.

**“Solar System Description and Specifications”** means the design of the Solar System as set forth in **Exhibit A**.

**“Solar System Loss”** means loss, theft, damage or destruction of the Solar System or Solar System Assets, or any other occurrence or event that prevents or limits the Solar System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure).

**“Solar System Removal Date”** shall have the meaning ascribed to it in Section 2.2(c) of the PPA.

**“Tax Benefits”** means any and all (i) investment tax credits under Section 48 Energy Credit of the Internal Revenue Code of 1986 attributable to the Solar System or any Solar System Assets (or a cash grant in lieu thereof under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, (ii) depreciation under Section 168 Accelerated Cost Recovery System of the Internal Revenue Code of 1986 or (iii) to the extent available during the Term, production tax credits under the Internal Revenue Code of 1986 attributable to the Solar System or any Solar System Assets (or a cash grant in lieu thereof).

**“Term”** means the Initial Term and any Extension Term.

**“Termination Payment”** means the amount stated on the Termination Payment Schedule attached to this PPA as **Exhibit C**.

**“Transfer Date”** shall have the meaning ascribed to it in Section 12.9 of the PPA.

**“Utility”** means the electric utility (including municipal or cooperative utility, as applicable) serving Buyer in the service territory in which Buyer is located at any given time.

**“Utility Documents”** shall have the meaning ascribed to it in Section 2.3(c) of the PPA.

**2. Rules of Interpretation.** In this PPA, unless expressly provided otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;

(b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;

(d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;

(j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(m) a reference to: (i) a day is a reference to a calendar day unless the defined term "Business Day" is used; (ii) a month is a reference to a calendar month; and (iii) a year is a reference to a calendar year unless otherwise specified; and

(n) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings.