

**Request for Qualifications  
To  
Finance, Design, Construct, Install, Operate, and  
Maintain  
New Rooftop, Ground, and Canopy-Mounted Solar Generation  
Facilities at**

**Public Sector Facilities Owned and Operated by Public Sector Entities  
Located in Illinois**

**October 30, 2015**

Document templates created by The Power Bureau for the Grow Solar Initiative of the Rooftop Solar Challenge II Grant awarded by the U.S. Department of Energy SunShot Program.

Grow Solar

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 SunShot  
U.S. Department of Energy

# RFQ: Solar Developers for Illinois Public Sector Projects

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## SECTION A EXECUTIVE SUMMARY

**A.1 Background.** The Midwest Renewable Energy Association (“MREA”), through its Grow Solar initiative is coordinating efforts among Midwest organizations and municipalities to build an open and advantageous solar market that provides long-term benefits to communities. In Illinois, MREA has retained the Power Bureau to provide technical support to municipal entities seeking to develop solar PV assets at their facilities. Currently, four (4) separate groups of municipal entities (‘Municipal Partners’) have been formed to pursue on-site solar PV development: wastewater treatment Hosts (located within Local Utility and Ameren service regions), Madison County municipal facilities (located within the Ameren service region), City of Urbana municipal facilities (located within the Ameren service region), and park Host facilities (located within the Local Utility service region).

This Request for Qualifications (“RFQ”) is intended to be the first step in identifying qualified solar PV developers from which these (and possibly other) Municipal Partners will solicit pricing proposals. Project developers (“Offeror(s)”) interested in submitting proposals for the development of solar power generation systems at multiple locations are urged to fully respond to this RFQ in order to be deemed a Qualified Offeror.

A subsequent Request for Proposals (‘RFP’) will be issued to Qualified Offers. The RFP will provide detailed data concerning the Municipal Partners, and relevant site data including the anticipated potential solar PV array size for each site. Qualified Offers will be allowed to submit prong proposals for some or all of the sites identified in the RFP. Depending on the financial viability of the proposals, the Municipal Partners may enter into separate purchase agreements with individual Qualified Offerors. While the Municipal Partners anticipate that power purchase agreement(s) (“AGREEMENT”) whereby the purchase of all electricity generated by a solar array will form the basis of agreements with Qualified Offerors, Offeror’s should note that alternative arrangements (i.e. direct purchase or lease of a solar array) may be of interest to individual Municipal Partners. Ultimately, the Municipal Partners’ goal is to both reduce its metered energy consumption from the local electric utility, and to lower its energy costs by entering into a contract with the Offeror(s) selected in this procurement.

**A.2 Three-Step Procurement Process.** The Municipal Partners will conduct a competitive three-step solicitation process.

1. **Phase 1 (Request for Qualifications - RFQ).** Offerors will be required to submit responses to a RFQ. The objective of the RFQ is to allow Offerors to certify and demonstrates their experience and qualifications to implement solar PV projects that can deliver value to Municipal Partners. A pool of Qualified Offers will be established based on the evaluation of Offerors’ submittals to the RFQ.
2. **Phase 2 (Request for Initial Proposals - RFIP).** Qualified Offerors will be required to submit responses to a RFIP. The objective of the RFIP is to allow Qualified Offerors the opportunity to provide project proposals for some or all of the potential solar PV projects identified by the Municipal Partners. RFIP submittals will be evaluated by

the Power Bureau and the Municipal Partners based objective criteria. The objective of the RFIP phase is to shortlist no more than three (3) Qualified Offerors for each potential project to participate in the third phase of the procurement. Qualified Offerors may be shortlisted for multiple projects.

3. **Phase 3 (Request for Final Proposals – RFFP).** Qualified Offerors that are shortlisted for each potential project in Phase 2 of the procurement process will be provided an opportunity to submit a best and final offer in a RFFP. The Municipal Partners anticipate conditionally awarding contract(s) to the shortlisted Qualified Offeror(s) that provide(s) the best value to the Municipal Partner. Final contract approval may be dependent on the Qualified Offeror’s ability to secure revenues through the upcoming Illinois Power Agency auction processes for renewable energy credits.

**A.3 Response Forms.** Offerors are required to submit their proposal substantially in the format described in **Section B** of this RFQ.

**A.4 Selection Criteria.** The following evaluation criteria will be used: Licensing and Certifications (20 points), Technical Capabilities (20 points), Financing Plan & Financing Partners (30 points), Experience & References (30 points)

**A.5 Procurement Schedule.** The Municipal Partners maintain the right to adjust the schedule at its sole discretion.

EVENT	DATE
Issue Request for Qualifications (RFQ)	October 30, 2015
Responses to RFQ Due)	November 13, 2015
Evaluation Period	November 13-20, 2015
Notification of Qualified Offerors	November 23, 2015
Issue Request for Initial Proposals (RFIP)	November 23, 2015
Responses to RFIP Due	Mid-December, 2015
Evaluation Period	Late-December, 2015
Notification of shortlisted Qualified Offerors	Late-December, 2015
Issue Request for Final Proposals (RFFP)	Early-January, 2016
Responses to RFFP Due	Mid-January, 2016
Evaluation Period	Late-January, 2016
Notification of Qualified Offerors	Late-January, 2016
Issuance of Condition Agreements	February, 2016
Participation in Illinois Power Agency SREC Auction	March, 2016
Issuance of Final Agreements	March, 2016

## **A.6 Attachments**

<b>Attachment A</b>	General Solar PV System Design Specifications
<b>Attachment B</b>	Disclosure Forms
<b>Attachment C</b>	Draft Solar PV Agreement

## **A.7 Primary Contact for Offerors.**

Mark Pruitt  
The Power Bureau  
416 South Third Street  
Chesterton, Indiana 46304  
219/921-3828  
[markjpruitt@thepowerbureau.com](mailto:markjpruitt@thepowerbureau.com)

Email inquiries are strongly preferred and will receive the quickest service.

## **SECTION B EVALUATION AND AWARD CRITERIA**

**B.1 Evaluation Process.** Offeror submissions in accordance with this **Section B**.

**B.2 Evaluation Process.** Each submission shall be evaluated in accordance with this **Section B** by an Evaluation Committee. The Power Bureau shall summarize its findings and submit those findings for review by the Municipal Partners. Based on the information submitted by the Offerors in response to this RFQ and the report prepared by the Power Bureau, the Municipal Partners shall designate the Qualified Offerors that will participate in Phase 2 of this solicitation process.

**B.3 Oral Presentation.** No interviews are planned for the RFQ phase of the solicitation process.

**B.4 Submittal Evaluation.** Each of the Evaluation Criteria described in this **Section B** will be used in evaluating proposals and establishing a pool of Qualified Offerors to participate in Phase 2 of this solicitation process.

Licensing and Certifications (20 points), Technical Capabilities (20 points), Financing Plan & Financing Partners (30 points), Experience & References (30 points)

**B.4.1 Licensing and Certifications (20 points).** Offerors must either: 1) currently certified by the Illinois Commerce Commission as a provider of Distributed Generation Services; or 2) have submitted the application for Distributed Generation certification by the Illinois Commerce Commission by the date of their response to this RFQ. Offeror's submittals should provide documentation that clearly identifies the Offeror's status with the Illinois Commerce Commission. This element of the evaluation will be worth up to twenty (20) points.

**B.4.2 Technical Capabilities (20 points).** Offeror's submittals must convey the technical capabilities of the firm, its staff, and partners (if any). Resumes of the management, operations, and financial staff that will be involved in any project for a Municipal Partner should be provided. The submission should demonstrate the Offeror's ability to manage multiple projects with concurrent construction timelines. This element of the evaluation will be worth up to twenty (20) points.

**B.4.3 Financing Plan & Financing Partners (30 points).** The Offeror will be evaluated based on its financial stability and ability to provide timely financing. Offerors should address in detail their range of funding options for the project as well as their prior experience with any proposed financing partners on comparable projects. Offerors should detail why their project financing approaches would offer the best value. Additionally, Offeror's should note that the Municipal Partners anticipate that potential revenues resulting from the sale of

Solar Renewable Energy Credits generated by the project (either through transactions with the Illinois Power Agency or some other counterparty) will be necessary to enable an affordable financeable package. This element of the evaluation is worth thirty (30) points.

**B.4.4 Experience & References (30 points).** Offerors will be evaluated based on their demonstrated experience in developing solar energy projects to full operation. In addition, Offerors will be evaluated on the demonstrated experience of the team's senior management personnel in structuring such projects and bringing such projects into commercial operations on time. If the Offeror is a team or joint venture of multiple companies, the Evaluation Panel will consider the experience of each member of the team or joint venture in light of their role in the proposed team or joint venture. This element of the evaluation is worth thirty (30) points.

## SECTION C OFFEROR'S RESPONSE ORGANIZATION AND SUBMISSION

This section outlines specific information necessary for the proper organization and manner in which Offerors' submittals should be proffered. References are made to other sections in this RFQ for further explanation.

**C.1 Submission Identification.** Submittals shall be proffered in electronic PDF format. The Offeror's submission shall be submitted by email to the delivery point identified in Section C.2. of this RFQ.

**C.2 Delivery or Mailing of Submissions.** Submissions should be delivered by email:

Mark Pruitt,  
The Power Bureau  
[markjpruitt@thepowerbureau.com](mailto:markjpruitt@thepowerbureau.com)

**C.3 Date and Time for Receiving Submissions.** Submissions must be received no later than 2:00 pm CST on November 13, 2015. The Offeror assumes the sole responsibility for timely delivery of its Submission, regardless of the method of delivery.

**C.4 Submission Size, Organization and Offeror Qualifications.** All submissions shall be submitted in electronic PDF format by email. Hard-copy submissions shall not be accepted.

The submission shall be organized substantially as follows:

**PART I Table of Contents.** Proposals shall include a table of contents listing the individual sections of the proposal and their corresponding page numbers.

**PART II Executive Summary.** Each Offeror should provide an executive summary of no more than three (3) pages providing a brief synopsis of the highlights of its proposal and addressing the Offeror's capabilities, experience, access to capital and the experience of its management personnel.

**PART III General Team Information and Firm(s) Data.** Each Offeror should provide the following information for the principal developer firm and each of its sub-consultants.

- A. Name(s), address(es), and role(s) of each firm (including all sub-consultants).
- B. Firm profile(s), including:
  - i. Age
  - ii. Firm history(ies)
  - iii. Firm size(s)
  - iv. Areas of specialty/concentration
  - v. Current firm workload(s) projected over the next year



- vi. Provide a list of any contracts held by the Offeror where the contract was terminated (either for default or convenience). This list should also identify any contracts that resulted in litigation or arbitration.
- C. Description of the team organization and personal qualifications of key staff, including:
- i. Identification of the single point of contact for the Offeror.
  - ii. Organizational chart illustrating reporting lines and names, titles, and roles for key participants proposed by the team.
  - iii. Resumes of the key senior management personnel and each key participant of the Offeror's team that would oversee aspects of this project, including technology selection, capital planning, construction, and Pepco interconnection coordination.

**PART IV Relevant Experience and Capabilities.** Offerors are to complete the Disclosure Forms contained in **Attachment B** providing additional information demonstrating relevant project experience in terms of project type, size, client type, and financing mechanism. Offerors shall identify, in the past three (3) years, the number of installations completed in the Government sector listing PV system sizes and broken down by system type: ground mount, roof mount, and parking lot canopy systems.

**PART V Technical Overview.** The Technical Proposal shall describe the equipment, materials, and methods used by the Offeror on a past solar PV project. Offerors shall provide a narrative that describes the equipment and systems installed and a discussion regarding why these were selected as the optimal choice. This section shall include:

- A. Installed System Overview: Technical narrative that describes the installed system, including but not limited to: general considerations, rated kWh DC capacity, expected kWh AC output in the first year and over a twenty (20) year period, mounting approach (tilt, tracking), and total area required for the PV system at each site in the applicable Project.
- B. Installed Equipment List: Model, technical specifications, quantity and characteristics of: modules, inverters, mounting structures, tracking system (if any), generation meters, Data Acquisition System (DAS) and monitoring system. The Technical Overview will describe the availability, supply and quality of proposed equipment. Technical spec sheets should be included in this section.
- C. Monitoring System Design: Overview of the installed Data Acquisition System (DAS), including quantity and model of proposed sensors, data acquisition hardware and software, screen shots of proposed solutions and IT requirements. Respondents shall identify requirements for connecting the DAS to the Internet.
- D. Monitoring / Data Presentation Information: Specifications of installed monitoring software, including screenshots of user interface and system diagnostic capabilities,

as well as hosting requirements, performance data and billing management plan and processes.

- E. Variance from Standard Solar PV Specification. Offeror's will identify areas where their internal process and practices deviate from those identified in Attachments A: Solar PV System Design Specifications. Proposed changes to the specifications should be provided in redline by the Offeror and included in the submittal.

**PART VI Financial Strength.** All Offerors must provide information as requested below relating to their team's financial ability to build, own (if necessary) and operate (if necessary) the solar power generation systems. Each Offeror must demonstrate that it has access to capital on terms and conditions that will allow it to construct the systems on competitive terms.

**PART VII Financing Methodologies.** All Offerors must address the financing methodologies they can provide for the Project(s) on which they are bidding. This part shall not exceed ten (10) pages. Each Offeror must:

- A. **For Power Purchase Agreements (PPA).** Describe the structure of its partnership with the financial partners it anticipates will be used under a PPA arrangement. If self-financing, please describe the financing plan, the source of funding and number of projects that the prime firm has financed utilizing this methodology.
- B. **For Equipment Lease Agreements.** Describe the structure of its partnership with the financial partners it anticipates will be used under an Equipment Lease arrangement. If self-financing, please describe the financing plan, the source of funding and number of projects that the prime firm has financed utilizing this methodology.
- C. **For Direct Purchases of Solar Arrays.** Describe the structure of its partnership with the financial partners it anticipates will be used for projects where the Municipal Partner seeks to purchase the solar PV array upon completion and commissioning of the Project. If self-financing, please describe the financing plan, the source of funding and number of projects that the prime firm has financed utilizing this methodology.
- D. **Grant Sources.** Describe any additional sources of federal or other funding that may be available to the support the financial viability of any proposed solar PV project.
- E. **Bankruptcy.** Identify whether the prime firm has ever filed for bankruptcy or experienced a delayed renewable energy generation project that resulted from a lack of available funding and/or a loss of funding to a client due to the inability to secure a financial partner. If yes, please explain.
- F. **Fraud.** Provide representation that the prime firm and anticipated financial partners have not, nor has any of the members of its governing board or principal officers, been indicted or convicted of fraud, corruption, collusion, bribery, or money laundering. If Offeror is unable to so warrant, then describe the circumstances.

**PART VIII Form of Agreement.** Each Offeror is required to submit a redline version of the draft form of Agreement as found in Attachment C, or to submit their own form of Agreement for review.

**Part IX Legal Actions (no page limitation).** Provide a listing and description of all legal actions of the past three (3) years in which the respondent or any team member has been:

- A debtor in bankruptcy;
- A defendant in a lawsuit for deficient performance under a contract;
- A defendant in an administrative action for deficient performance on a project; and
- A defendant in any criminal action.

List all lawsuits, regulatory proceedings, or arbitration in which the Respondent or its affiliates or predecessors have been or are engaged in that could affect Respondent's performance of its bid. Also, identify the parties involved in such lawsuits, proceedings, or arbitration, and the final resolution or present status of such matters.

## SECTION D SUBMITTAL PROCEDURES

**D.1 Contact Person.** For information regarding this RFQ please contact:

Mark Pruitt  
The Power Bureau  
416 South Third Street  
Chesterton, Indiana 46304  
219/921-3828  
[markjpruitt@thepowerbureau.com](mailto:markjpruitt@thepowerbureau.com)

Email inquiries are strongly preferred and will receive the quickest service.

**D.2 Explanations to Prospective Offerors.** Each Offeror should carefully examine this RFQ and any and all amendments, addenda or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a submission. Should an Offeror find discrepancies or ambiguities in, or omissions from, the RFQ or its attachments, addenda or revisions they must submit a request for interpretation or correction in writing. Any information given to an Offeror concerning the RFQ shall be furnished promptly to all other Offerors as an amendment or addendum to this RFQ if in the sole discretion of the Power Bureau and the Municipal Partners that information is necessary in proffering submissions or if the lack of it would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before selection of Qualified Offerors shall not be binding.

Initial questions should be directed to the e-mail addresses listed in Section D.1 no later than 12:00 p.m. CST on November 6, 2015. Questions will be addressed and included in a RFQ Addendum.

**D.3 Retention of Submissions.** All submissions shall be retained by the Power Bureau and therefore shall not be returned to the Offerors. With the exception of proprietary financial information, the submissions shall become the property of the Power Bureau and the Municipal Partners which shall use such information as it determines.

**D.4 Examination of Submissions.** Offerors are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this RFQ. Failure to do so shall be at the sole risk of the Offeror and may result in disqualification.

**D.5 Late Submissions; Modifications.** Any submission received after the exact time specified for receipt may not be considered.

**D.6 No Compensation for Preparation of Submissions.** Neither MREA, the Power Bureau, nor the Municipal Partners shall not bear or assume any financial obligations or liabilities regarding the preparation of any submissions submitted in response to this RFQ, or prepared in

connection therewith, including, but without limitation, any submissions, statements, reports, data, information, materials or other documents or items.

**D.7 Rejection of Submissions.** The Municipal Partners reserve the right, in its sole discretion:

- A. To cancel this RFQ or reject all submissions.
- B. To not participate in any solar project development actions subsequent to this RFQ.
- C. To reject submissions that fail to prove the Offeror's responsibility or access to capital.
- D. To reject submissions that contain conditions and/or contingencies that in the Municipal Partners' sole judgment, make the submission indefinite, incomplete, otherwise nonresponsive, or otherwise unacceptable to the Municipal Partners.
- E. To waive minor irregularities in any submission provided such waiver does not result in an unfair advantage to any Offeror.
- F. To reject the submission of any Offeror that has submitted a false or misleading statement, affidavit or certification in connection with such submission or this RFQ.

**ATTACHMENT A General Solar PV System Design Specifications**

**ATTACHMENT A: General Solar PV System Design Specifications**

## **ATTACHMENT A General Solar PV System Design Specifications**

### **SOLAR PV SYSTEM DESIGN SPECIFICATIONS**

#### **1. SITE ACCESS**

Each selected offeror (“Offeror”) will be required to comply with all applicable State and local laws, rules and regulations applicable to the construction of the Systems at the various sites. Prospective Offerors are cautioned that the sites encompass diverse uses including secured and limited access sites and Offeror will be required to coordinate the construction activities at certain sites with the applicable Host so as to avoid disrupting the Host’s use of the site. Unless otherwise determined by the Host that controls each site, Offeror shall be responsible for providing bathroom and storage facilities for all workers on-site, and shall be responsible for procuring, installing, securing, and removing temporary security fencing and scaffolding.

#### **2. PROJECT MANAGEMENT**

##### *2.1 Project Manager*

Offeror shall assign a project manager (“Project Manager”) from its firm upon execution of an agreement with the Host for the applicable Project (the “Project”). The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of day-to-day contact for the Host and the Hosts.

##### *2.2 Solar Incentives*

Unless the Host directs otherwise, Offeror shall be responsible for the submission of any applications for available energy production incentives associated with the Project and shall be responsible for providing updated documentation to incentive program administrators throughout the Project, as required by rules of the relevant incentive program.

##### *2.3 Interconnection*

Offeror shall be responsible for assembling the applications for all necessary interconnection agreements with the local utility for the Project and shall pay any application fees imposed by Local Utility. Offeror shall be responsible for any fees, costs and expenses relating to normal and customary utility interconnection studies that may be required in connection with such agreements.

All utility work required in connection with an interconnection agreement that is on the site side of the Local Utility meter shall be at the sole cost and expense of the Offeror. Utility work required in connection with an interconnection agreement that is beyond Local Utility’s meter shall be at the sole cost and expense of the Offeror.

Systems installed as part of this Project will take advantage of Net Energy Metering (NEM), unless specified otherwise by Host or its agents. Offeror shall be responsible for ensuring the system design and interconnection qualifies for NEM, as applicable.

## **ATTACHMENT A General Solar PV System Design Specifications**

### **3. SYSTEM DESIGN**

#### ***3.1 Design Review Process***

Offeror is responsible for providing designs for each site within the Project to the Host for its review and approval in accordance with the terms and conditions of the agreement. Costs for engineering reviews and approvals associated with such designs shall be borne by the Offeror. System designs must take into account Host's aesthetic issues and shall not conflict with any current Host operations at the applicable site. The schedule for the Project established pursuant to the AGREEMENT shall include adequate time for Host review and approval of such submittals.

#### ***3.2 Shading***

Offeror shall avoid excessive shading on modules to the extent possible. Where shading losses are encountered, Offeror shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.

#### ***3.3 Offeror Licensing***

Offeror shall comply with all applicable licensing requirements for the work to construct and install the Project.

#### ***3.4 Production Modeling***

Production modeling of the PV systems in the Project shall be performed in accordance with the instructions provided in the RFP.

#### ***3.5 Permits And Approvals***

Offeror, at its sole cost and expense, shall obtain all permits and approvals required by applicable law for the Project from the applicable Hosts and agencies of the State of Illinois, the County, and municipalities when applicable including, without limitation, any permits for road closures.

#### ***3.6 Technical Requirements***

All components of the Project and their installation and subsequent operation shall comply with all applicable industry codes and standards and all applicable laws. Offeror shall demonstrate to the County's reasonable satisfaction that at each site the existing structures will not be compromised or adversely impacted by the installation and/or operation of the System Offeror has proposed to install. In addition, an Offeror's proposed systems shall comply with the following requirements.

- A. PV Modules.* The PV modules proposed by Offeror shall comply with at least the following:
- IEEE 1262 "Recommended Practice for Qualifications of Photovoltaic Modules".
  - System modules shall be UL1703 listed and CEC listed.
  - Modules shall be new, undamaged, fully warranted without defect.
  - If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special



## ATTACHMENT A General Solar PV System Design Specifications

maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

*B. Inverters.* The inverters proposed by Offeror shall comply with at least the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all interconnection requirements.
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems”.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall be CEC-listed with an efficiency of 95.5% or higher.
- Inverters must automatically reset and resume normal operation after a power limiting operation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with Host activities.

*C. Electrical Balance of System Components.*

- Each proposed PV system shall include, at a minimum, one fused DC disconnect and one fused AC disconnect for safety and maintenance concerns.
- String combiner boxes shall be load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- Offeror shall utilize lightning arrestors to protect appropriate equipment from lightning strikes.
- Offeror shall utilize surge suppressors to protect the appropriate equipment from electrical surges.
- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

*D. Mounting Systems.* The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion, UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected term of the AGREEMENT. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the

## ATTACHMENT A General Solar PV System Design Specifications

mounting system nor the surface on which it is mounted shall degrade or be damaged over time.

- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- For unframed modules, bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- Offeror shall utilize tamper-resistant PV module to rack fasteners for all PV module mounting.
- Final coating and paint colors shall be reviewed and approved by the Host during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

*E. Corrosion Control.* The corrosion control proposed by Offeror must comply with the following requirements:

- Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components
- Each System and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.

*F. Roofing Requirements.* The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on building roofs. Unless applicable law requires or the County mandates a greater distance, (i) a minimum of three (3) feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof; and (ii) a minimum of four (4) feet of clearance shall be provided between PV equipment and the edge of the roof. The PV equipment shall not be installed in a way that obstructs air flow into or out of existing building systems or equipment. Proposed roof top mounted systems may be ballasted, standing seam attachment, or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Offeror prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Offeror shall perform all work so that any existing roof warranties shall not be voided, reduced, or otherwise negatively impacted.
- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.

## ATTACHMENT A General Solar PV System Design Specifications

- All materials and/or sealants must be chemically compatible.
- All penetrations shall be waterproofed.
- Detail(s) for the sealing of any roof penetrations shall be approved in writing to the Host, as well as the manufacturer of the existing roofing system (if it is still under warranty), as part of system design review and approval – prior to Offeror proceeding with work. The Host will work with the Offeror to identify those roofs within the Project for which a warranty is known to still be in effect.
- Any damage to roofing material during installation of solar systems must be remedied by Offeror.

*G. Shade Structure (Carport) Requirements.* Offeror will be responsible for incorporating the following elements in the design and construction of such Systems:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structures located in parking lots shall have a concrete bollards installed on support posts. The bollards shall extend up to a minimum elevation of three (3) feet above finished grade. This requirement may be waived at the Host's sole discretion.
- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the Host's approval.

Installation of shade structure PV systems shall include new high efficiency lighting. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective. Lighting systems shall also meet the following requirements:

- Lighting shall be LED lighting or other similar energy efficient lighting system.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new SSS canopy lighting.

Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the Host.

## ATTACHMENT A General Solar PV System Design Specifications

*H. Ancillary Equipment Enclosures.* The following elements will be incorporated into the design and construction of the System unless waived at the Host's sole discretion:

- All ancillary equipment be grouped to a single location per site and shall be surrounded by a fence to prevent access by unauthorized personnel. The fence shall be a six (6) foot high chain link fence with vinyl privacy slats.
- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal Host operations and minimizes the visual impacts to the site.

*I. Placards and Signage.*

- Placards and signs shall correspond with requirements in the National Electric Code and the applicable interconnection agreement in terms of appearance, wording, and placement.
- Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

*J. Infrastructure for Ground Mount Systems.* The following elements will be incorporated into the design and construction of each ground mount System:

- The site shall be surrounded by an eight (8) foot high chain link fence with vinyl privacy slats to prevent unauthorized personnel from gaining access the site.
- Gates shall be installed to enable site access for trucks.
- A pathway a minimum of ten (10) feet wide passable by a maintenance truck shall be provided within the array fence to allow for access to all equipment enclosed within the fence area.
- Access to water for maintenance (module cleaning) purposes, as determined adequate by Offeror and approved by the Host.
- Access to low voltage (120V) AC power to power maintenance equipment and miscellaneous equipment.
- To the extent feasible, Offeror shall install sufficient security cameras on site to monitor the array area.
- Offeror will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management.
- Offeror will be responsible for creating an access road to any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.

*K. Wiring and Cabling Runs.*

- Offeror shall install all AC conductors in conduit.
- Direct burial wire will not be acceptable. Conduit buried underground shall be suitable for the application and compliant with all applicable codes. A tracing/caution tape must be installed in the trench over all buried conduit.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. Unless applicable law is more stringent, the minimum depth of the

## ATTACHMENT A General Solar PV System Design Specifications

conduit shall be per NEC 2011 Article 300.5. The Offeror must provide documentation to the Host of final depth and routes of all conduit installed in horizontal bores.

- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the Host as part of Design Review.
- All spare conduits shall be cleaned, mandrelled, and provided with a pullwire. Spare conduits shall be required for security cameras for ground mount systems.
- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Offeror shall install and secure the exposed string cable homeruns along the beams or structure where the combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 1.5% and acceptable wire loss in AC circuits is < 1.5% as well.
- All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- All electrical connections and terminations shall be torqued according to manufacturer specifications and marked/sealed at appropriate torque point.

### *L. Grounding and Bonding.*

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.
- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

*M. Monitoring System, DAS, and Reporting.* Offeror shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the Host to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Offeror shall provide equipment to connect the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The Host will pay for the cost of cellular data service if needed, but not for the modem or other equipment needed to connect to the cellular network. The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information

## **ATTACHMENT A General Solar PV System Design Specifications**

- System availability
- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed for each site

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the Host for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

Additionally, Offeror shall make available to the Host, at no additional cost, the following reports:

- Monthly Production report shall be available online to the Host personnel.
- System performance data shall be made available electronically to the Host in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the Host to assist the Host in reconciling system output with utility bills and any production guarantee under the AGREEMENT.

A monitoring manual shall be provided to the Host in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports. If requested by the Host, Offeror shall train the building operations staff on the procedures to shut down a System in the case of an emergency or for safety reasons.

### ***3.7 Warranties***

All work performed by Offeror must not render void, violate, or otherwise jeopardize any preexisting Host facility or building warranties or the warranties of system components installed therein.

## **4. PROCUREMENT/CONSTRUCTION**

### ***4.1 Tree Removal***

Any trees that are in the footprint of systems to be installed by the Offeror shall be removed by the Offeror at its expense, subject to the approval of the Host. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The Host will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Offeror identifies these trees during the design process. The Offeror shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Offeror's responsibility.

## **ATTACHMENT A General Solar PV System Design Specifications**

### *4.2 Line Location*

Offeror will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon any such existing infrastructure.

### *4.3 Quality Control*

To ensure safety and quality of the installation, Offeror shall:

- Keep each site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with all applicable laws.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads.
- Comply with all Host storm water pollution prevention ordinances.

### *4.4 Removal and Remediation*

Offeror shall remove all construction spoils, abandoned footings, utilities, construction equipment and other byproducts of construction. All disturbed areas including landscaping, asphalt, and concrete shall be remediated to be in equal or better condition than found. Parking lots shall be re-striped if affected by construction operations.

## **5. REMOVAL OF SYSTEMS**

At the end of the term of the AGREEMENT, Offeror shall be required, at its sole cost and expense, to remove the Systems from each of the Sites.

**Attachment B: Disclosure Forms**

**ATTACHMENT B: DISCLOSURE FORMS**



## Attachment B: Disclosure Forms

The Municipal Partners reserve the right to verify all information provided in this Experience Form. Offeror ("Prime Firm") will be automatically disqualified if all sections are not completed.

### PART I: INFORMATION ABOUT THE PROJECT TEAM

**1. Provide the contact information for the Prime Firm. Also briefly describe the role of the Prime Firm.**

Prime Entity Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_ Date Incorporated: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Year of First Solar Project Completion: \_\_\_\_\_

**2. Identify and provide contact information for all other firms associated with designing, building and/or operating and maintaining the Projects (excluding investors and/or other financing firms if a separate organization) with which your firm may partner or subcontract. Identify, and if necessary, describe each firm's role (e.g., project integrator, system designer, construction management, post construction operations and maintenance, etc.). If needed, please add additional pages.**

Partner Entity Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_ Date Incorporated: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Year of First Solar Project Completion: \_\_\_\_\_

Partner Entity Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

## Attachment B: Disclosure Forms

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Federal Tax ID: \_\_\_\_\_ Date Incorporated: \_\_\_\_\_  
State of Incorporation: \_\_\_\_\_  
Year of First Solar Project Completion: \_\_\_\_\_

Partner Entity Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Federal Tax ID: \_\_\_\_\_ Date Incorporated: \_\_\_\_\_  
State of Incorporation: \_\_\_\_\_  
Year of First Solar Project Completion: \_\_\_\_\_

Partner Entity Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Federal Tax ID: \_\_\_\_\_ Date Incorporated: \_\_\_\_\_  
State of Incorporation: \_\_\_\_\_  
Year of First Solar Project Completion: \_\_\_\_\_

### PART II: ESSENTIAL REQUIREMENTS FOR THE PROJECT TEAM

NOTE: Prime Firm will be automatically disqualified if the answer to any of questions 1 - 7 is "No." All questions below MUST be answered. Information provided will be used in the RFP evaluation for qualified offerors.

- 1. Has the Prime Firm provided a list of five (5) project references for which at least one team member from Part I has participated as part of a project team, which totals at least two (2) MW?**

Yes       No

## Attachment B: Disclosure Forms

If yes, please provide the following summary and reference information on these projects:

**Project Experience Summary Table**

LOCATION	# Projects	kW-DC	Financing Type
<b>TOTAL</b>			

### Project 1

Location: \_\_\_\_\_  
 Size (kW-DC): \_\_\_\_\_  
 Client: \_\_\_\_\_  
 Client Type (Comm/Gov): \_\_\_\_\_  
 Project Finance Type: \_\_\_\_\_  
 Project Contact Name: \_\_\_\_\_  
 Project Contact Email: \_\_\_\_\_  
 Project Contact Phone: \_\_\_\_\_  
 Partner Firms and Roles: \_\_\_\_\_  
 \_\_\_\_\_

### Project 2

Location: \_\_\_\_\_  
 Size (kW-DC): \_\_\_\_\_  
 Client: \_\_\_\_\_  
 Client Type (Comm/Gov): \_\_\_\_\_  
 Project Finance Type: \_\_\_\_\_  
 Project Contact Name: \_\_\_\_\_  
 Project Contact Email: \_\_\_\_\_  
 Project Contact Phone: \_\_\_\_\_  
 Partner Firms and Roles: \_\_\_\_\_  
 \_\_\_\_\_

### Project 3

Location: \_\_\_\_\_  
 Size (kW-DC): \_\_\_\_\_  
 Client: \_\_\_\_\_  
 Client Type (Comm/Gov): \_\_\_\_\_  
 Project Finance Type: \_\_\_\_\_  
 Project Contact Name: \_\_\_\_\_  
 Project Contact Email: \_\_\_\_\_  
 Project Contact Phone: \_\_\_\_\_

## Attachment B: Disclosure Forms

Partner Firms and Roles:

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### Project 4

Location:

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Size (kW-DC):

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Client:

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Client Type (Comm/Gov):

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Project Finance Type:

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Project Contact Name:

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Project Contact Email:

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Project Contact Phone:

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Partner Firms and Roles:

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### Project 5

Location:

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Size (kW-DC):

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Client:

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Client Type (Comm/Gov):

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Project Finance Type:

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Project Contact Name:

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Project Contact Email:

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Project Contact Phone:

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Partner Firms and Roles:

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**2. Has the client for at least one of the projects listed above been a public sector agency in the Midwest region?**

Yes       No

**3. Has the Prime Firm, listed above in Part I, been regularly and continuously engaged in the business of providing solar electric power generation systems for at least five (5) years?**

Yes       No

**4. Does the Prime Firm, listed above in Part I, have experience with at least three (3) completed and operational installations of solar energy power generation systems at municipal or public facilities?**

Yes       No

## Attachment B: Disclosure Forms

5. Does the Prime Firm or one of the entities listed above in Part I hold any active and relevant contractor licenses in Illinois?

Yes       No

If Yes, provide Contractor's Contractors License Number, the name under which license is held, and expiration date:

Name of License Holder: \_\_\_\_\_  
License Number: \_\_\_\_\_  
License Type: \_\_\_\_\_  
Expiration Date of License: \_\_\_\_\_  
Role of Licensed Holder in Project Team: \_\_\_\_\_

6. Does the Post Construction Operations and Maintenance Entity, listed above in Part I, have experience with at least three (3) completed and operational installations of solar energy power generation systems at municipal or public facilities?

Yes       No

### PART III: FINANCING PARTNERS

A requirement of the Prime Firm is to certify that it maintains a relationship with a minimum of one (1) financial investor ("Financier") which has successfully delivered projects. Alternatively, if the offeror "self-finances" and does not use outside financier, please provide a letter that demonstrates the sufficiency of your self-financing.

1. What is (are) the name(s) of any Financiers with which the Prime Firm has successfully executed solar PV projects"

Financier 1: \_\_\_\_\_  
Financier 2: \_\_\_\_\_  
Financier 3: \_\_\_\_\_

2. Has the financier or the Prime Firm (if self-financing) successfully financed at least three (3) operational projects in the past five (5) years?

Yes       No

If yes, please identify reference projects (add additional pages if needed):

## Attachment B: Disclosure Forms

### Financier #1 or Prime Firm

#### **Project Financing 1**

Location: \_\_\_\_\_  
Size (kW-DC): \_\_\_\_\_  
Client: \_\_\_\_\_  
Project Finance Type: \_\_\_\_\_  
Project Contact Name: \_\_\_\_\_  
Project Contact Email: \_\_\_\_\_  
Project Contact Phone: \_\_\_\_\_  
Prime Firm: \_\_\_\_\_  
Financing Firm & Contact: \_\_\_\_\_

#### **Project Financing 2**

Location: \_\_\_\_\_  
Size (kW-DC): \_\_\_\_\_  
Client: \_\_\_\_\_  
Project Finance Type: \_\_\_\_\_  
Project Contact Name: \_\_\_\_\_  
Project Contact Email: \_\_\_\_\_  
Project Contact Phone: \_\_\_\_\_  
Prime Firm: \_\_\_\_\_  
Financing Firm & Contact: \_\_\_\_\_

#### **Project Financing 3**

Location: \_\_\_\_\_  
Size (kW-DC): \_\_\_\_\_  
Client: \_\_\_\_\_  
Project Finance Type: \_\_\_\_\_  
Project Contact Name: \_\_\_\_\_  
Project Contact Email: \_\_\_\_\_  
Project Contact Phone: \_\_\_\_\_  
Prime Firm: \_\_\_\_\_  
Financing Firm & Contact: \_\_\_\_\_

3. **Does Prime Firm have experience with at least five (5) power purchase agreement contracts with total contracts representing at least \$3 million in project construction costs?**

Yes       No

## Attachment B: Disclosure Forms

### PART IV: PRIOR EXPERIENCE

NOTE: Prime Firm will be automatically disqualified if the answer to any of questions 1 - 7 is "Yes." All questions below MUST be answered.

1. **Has the Prime Firm or any of the partners listed above that are associated with designing, building and/or operating and maintaining the projects ever defaulted on a design, construction or operations and maintenance contract?**  
 Yes       No
  
2. **Within the last five (5) years, has a surety firm completed a contract on behalf of the Prime Firm or any of its partners listed above, or paid for project completion because one of the members was in default?**  
 Yes       No
  
3. **At the time of submitting this Form, has the Prime Firm or any of its partners listed above been ineligible to bid on or be awarded a public works contract, or perform as a sub-contractor on a public works contract for any reason?**  
 Yes       No
  
4. **At any time during the last five (5) years, has the Prime Firm or any of its partners listed above been convicted of a crime involving the awarding of a contract of a government construction project, or a crime relating to the bidding or performance of a government contract?**  
 Yes       No
  
5. **Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?**  
 Yes       No
  
6. **Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been convicted of a crime involving any federal, state, or local law related to construction?**  
 Yes       No
  
7. **Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?**  
 Yes       No

## Attachment B: Disclosure Forms

### PART V: CERTIFICATION

I, the undersigned, am authorized to make this verification on behalf of the Prime Firm, \_\_\_\_\_ . I have read the foregoing Form. I am familiar with its contents and, based upon information available to me, the contents are true and correct. I declare under penalty of perjury under the laws of the state of Illinois that the foregoing is true and correct.

Executed at		,		on	
	(City)		(State)		(Date)

(Signature)

(Printed Name)

(Firm)

(Title)



## ATTACHMENT C: Draft Solar PV Agreement

THIS DRAFT POWER PURCHASE AGREEMENT IS INTENDED TO SERVE AS A SAMPLE TEMPLATE AND SHOULD NOT BE CONSIDERED AS A DEFINITIVE OR COMPLETE. THE HOST RESERVES THE RIGHT TO ALTER OR REPLACE IN ITS ENTIRETY THE CONTENTS OF THIS DRAFT POWER PURCHASE AGREEMENT AT ANY TIME PRIOR TO VENDOR SELECTION OR CONTRACT EXECUTION.

### EXCEPTIONS TO DRAFT AGREEMENT TERMS AND CONDITIONS

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[SOLAR ENERGY POWER PURCHASE AND SALE [or] ENERGY SERVICES] AGREEMENT

BY AND BETWEEN

[\_\_\_\_\_],

AS SYSTEM OWNER

AND

[\_\_\_\_\_],

AS HOST CUSTOMER

---

AS OF

\_\_\_\_\_, 20\_\_

## SOLAR ENERGY [POWER PURCHASE AND SALE [or] ENERGY SERVICES] AGREEMENT

This SOLAR ENERGY POWER PURCHASE AND SALE AGREEMENT [or SOLAR ENERGY SERVICES AGREEMENT] (this “**Agreement**”) is made and entered into as of [ ] (the “**Effective Date**”), by and between [Seller], a [State] [corporation / limited liability company] (“**System Owner**”), and [ ], a [state and type of municipal] entity (“**Host Customer**”). Each of System Owner and Host Customer is sometimes referred to as a “**Party**” and together, as the “**Parties.**”

### RECITALS

A. Host Customer owns and controls certain property located at [address], as more particularly described on the attached **Exhibit A** and incorporated by reference herein (the “**Premises**”), which Premises uses Electricity (as defined in Section 1.2).

B. Concurrently with this Agreement, Host Customer and System Owner are entering into that certain [Solar Energy Facility Site Lease Agreement], attached as **Exhibit F** and incorporated herein by this reference (the “**Site Lease Agreement**”), pursuant to which Host Customer has granted to System Owner a [leasehold] interest in a portion of the Premises described and depicted on **Exhibit A-1** and incorporated by reference herein (the “**Site**”) together with certain rights of access to, ingress to and egress from, and use of the Premises for the purposes of constructing, installing, operating, maintaining, replacing, and repairing a solar photovoltaic electric generation system, as described on the attached **Exhibit B** and incorporated herein by this reference (the “**System**”), and selling the Electricity generated from the System to Host Customer.

C. System Owner, at Host Customer’s request, intends to design, install, own or lease, operate, and maintain the System for the production of Electricity at the Site.

D. System Owner desires to sell, and Host Customer desires to purchase, all of the Output (as defined in Section 1.2).

E. Pursuant to this Agreement, System Owner and Host Customer intend that System Owner obtain and retain all Green Attributes and Environmental Financial Incentives, and all other financial incentives and Tax Benefits associated with the development of the System, including the installation, ownership, and operation of such System and the sale of the Output to Host Customer.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and undertakings set forth herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE 1: DEFINITIONS; RULES OF INTERPRETATION

### Section 1.1 Rules of Interpretation.

**Section 1.1.1** In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

**Section 1.1.2** The Parties acknowledge that this is an arms-length transaction and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably, and neither party shall benefit from a presumption of construction favoring that party.

**Section 1.2 Definitions.** The following terms have the following meanings:

“Agreement” has the meaning set forth in the introductory paragraph.

“Base Contract Price” means the price in \$U.S. per kWh to be paid by Site Host to System Owner in Year 1 for the purchase of Output, as specified in Article 4 and Exhibit D.

“Business Day” means any day other than Saturday, Sunday, or a day on which the Federal Reserve Bank is authorized or required to be closed.

“Commercial Operation” means the condition existing when (a) the System is capable of generating Electricity for four (4) continuous hours and (b) such Electricity is delivered through the Meter to the Site Electrical System.

“Commercial Operation Date” has the meaning given in Section 4.4.

“Commercial Operation Deadline” has the meaning given in Section 5.1.

“Conditions Precedent” has the meaning given in Section 5.1.

“Delivery Point” has the meaning given in Section 4.2.

“Defaulting Party” has the meaning given in Section 13.1.

“Dispute” has the meaning given in Section 20.1.1.

“Due Date” has the meaning given in Section 8.3.

“Early Termination Date” has the meaning given in Section 13.2.

“Early Termination Fee” has the meaning given in Section 13.4 and Exhibit C.

“Effective Date” has the meaning given in the introductory paragraph.

“Electricity” means electrical energy.

“Electricity Provider” means the entity providing for the supply of electrical energy to Host Customer. Electricity Provider may be, as applicable, Host Utility or an Alternative Electric Retail Supplier (as defined in 220 ILCS 5/16-102).

“Emergency” means an event occurring at the Site, or on the adjoining Premises, that (a) poses actual or imminent risk of (i) serious personal injury or (ii) material physical damage to the System and (b) requires, in the good faith determination of Host Customer or System Owner, immediate preventative or remedial action.

System Financial Incentives do not include Green Attributes.

“Event of Default” has the meaning given in Section 13.1.

“Exercise Notice” has the meaning given in Section 15.7.

“Exercise Period” has the meaning given in Section 15.7.

“Extension Period” has meaning given in Section 2.1.2.

“Fair Market Value” has meaning given in Section 15.2. For clarity, Fair Market Value may not equal the Early Termination Fee set forth in Section 13.4 and Exhibit C.

“Final Determination” has the meaning given in Section 15.5.3.

“Force Majeure Event” means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance, despite the exercise of due diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (b) such event is not due to such Party’s negligence or intentional misconduct, (c) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (d) such Party has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effect of such event and to mitigate the consequences thereof and (e) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include: strikes or other labor disputes, supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest, actions or failures to act of any governmental authority or agency, but does not include any inability to make any payments that are due hereunder or to any third party, or to procure insurance required to be procured under this Agreement.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System or its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits or any other credits representing environmental attributes now in existence or available in the future. Green Attributes do not include System Financial Incentives.

“Host Customer” has the meaning given to it in the introductory paragraph.

“Host Utility” means the electric distribution company serving or connected to Host Customer or the Site.

“Indemnified Parties” has the meaning given in Section 16.2.

“Indemnifying Party” has the meaning given in Section 16.2.

“Independent Appraisal” means the process for determining a Purchase Price in accordance with Section 15.5.

“Independent Appraiser” has the meaning given in Section 15.5.1.

“Interconnection and Net Metering Agreements” means, collectively, as appropriate, (a) the interconnection or net metering agreement to be entered into by Host Customer or System Owner and Host Utility for the interconnection of the System to the Host Utility system and to net meter the System with the Host Utility, (b) any interconnection services agreement and (c) any studies regarding interconnection of new generation facilities with respect to the System.

“Lender” or “Lenders” means, either in the singular or collectively, as applicable, the banks, financial institutions or other institutional investors providing debt or equity financing for the System and any trustee or agent acting on any such Person’s behalf.

“Mortgagee” means any Person that holds or is the beneficiary of a mortgage, deed of trust, lien, security interest or any other similar encumbrance affecting the Premises, as applicable.

“Meter” means revenue grade meter(s) and electronic data acquisition equipment to be used to continuously measure and record the Output.

“Non-Defaulting Party” has the meaning given in Section 13.2.

“Output” means, and is limited to, the Electricity produced by the System and delivered by System Owner to Host Customer at the Delivery Point.

“Party” or “Parties” has the meaning given to it in the introductory paragraph.

“Permit” means an approval, license, or other authorization from a unit of government including federal, state, provincial, county, municipal, regional, environmental or other governmental body having jurisdiction over System Owner or Host Customer and their respective obligations under this Agreement or over the System or the Site, as may be in effect from time to time.

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency or any other individual or entity.

“Preliminary Determination” has the meaning given in Section 15.5.2.

“Premises” has the meaning given to it in the Recitals.

“Purchase Option” has the meaning given in Section 15.1.

“Purchase Price” has the meaning given in Section 15.2.

“Renewable Energy Credits” means all certificates (including tradable renewable certificates), “green tags,” or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists or for which a market may exist at a future time.

“Reporting Rights” means the right of System Owner to report to any federal, state, or local agency, authority 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 System Owner owns the Green Attributes and the Environmental Financial Incentives associated with the Output.

“Scheduled Outage” has the meaning given to it in Section 10.5.

“Site” has the meaning given to it in the Recitals.

“Site Lease Agreement” has the meaning given to it in the Recitals.

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

“Solar Electricity Price” has the meaning given to it in Section 8.1.

“Subcontractor” means any subcontractor, of any tier, or supplier of services to System Owner or any subcontractor, of any tier.

“System” has the meaning given to it in the Recitals.

“System Assets” means all equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, Meters, tools, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to, maintaining the use of the solar generation system and providing Output to Host Customer at the Delivery Point, and as it may be modified during the Term. For the avoidance of doubt, the System Assets specifically exclude any part of the Site Electrical System.

“System Financial Incentives” means each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future including, but not limited to, (a) any federal, state, or local tax credits, deductions, or other benefits based on ownership of, production from, operation of, or investment in the System, and (2) any grants, loans, or other funding available on advantageous terms based on the characteristics of the System from any source (including units of government, utilities, and private entities).

“System Owner” has the meaning given to it in the introductory paragraph.

“Tax Benefits” means all federal, state and local tax deductions, tax credits, tax grants, and other tax benefits available to taxpayers, including grants under Section 1603 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as well as any replacements or modifications to such tax deductions, credits, grants or benefits.

“Term” has the meaning given to it in Section 2.1.

“Transfer Date” has the meaning given to it in Section 15.8.

## ARTICLE 2: TERM

### Section 2.1 Term.

**Section 2.1.1** This Agreement shall come into full force and effect and become binding on the Parties on the Effective Date and shall be in effect until the later of 00:00 hours on the [length of term] anniversary of the Commercial Operation Date or the end of any Extension Period, unless earlier terminated (the “Term”).

**Section 2.1.2** The Parties may mutually agree to extend the Term for two (2) consecutive periods of five (5) years each (each such extension, an “Extension Period”) in accordance with this Section 2.1.2, with each such Extension Period expiring at 00:00 hours on the respective anniversary of

the Commercial Operation Date. No fewer than 180 days before the end of the Term, as may be extended pursuant to this Section 2.1.2, System Owner shall provide notice to Host Customer of System Owner's desire to extend the Term for an additional five (5) years. Host Customer shall respond to System Owner's notice within thirty (30) days of receipt indicating whether Host Customer agrees to extend the Term for an additional five (5) years. If Host Customer notifies System Owner that Host Customer does not agree to extend the Term, the Term shall expire in accordance with Section 2.1.1.

### **ARTICLE 3: CONSTRUCTION AND INSTALLATION OF SYSTEM**

**Section 3.1 Construction and Installation of System.** System Owner (or its Subcontractors) shall design, engineer, procure, install, construct, service, test, interconnect and start-up the System at the Site in a good and workmanlike manner, in accordance with all applicable laws and regulations, and consistent with the technical specifications set forth in Exhibit B, which are hereby incorporated in this Agreement.

**Section 3.2 Subcontractors.** Without limiting System Owner's liability or obligations under this Agreement, System Owner may engage Subcontractors to meet any obligation under this Agreement. Any Subcontractors engaged by System Owner to perform any portion of the obligations described in Section 3.1 shall have all licenses and registrations required to perform the services to be performed by such Subcontractor, and any such Subcontractor must maintain insurance as required pursuant to Section 17.1. Upon request, System Owner shall provide Host Customer with evidence that any such Subcontractor has obtained insurance as required pursuant to Sections 17.1 and Section 17.4.

### **ARTICLE 4: CONNECTION AND DELIVERY POINT; PURCHASE AND SALE OF OUTPUT**

**Section 4.1 Purchase and Sale of Output.** Commencing on the Commercial Operation Date and continuing throughout the Term, System Owner will make available to Host Customer, and Host Customer will take delivery of, at the Delivery Point, all of the Output produced by the System. Any Output not immediately usable by Host Customer will be exported to the Electricity Supplier pursuant to the Net Metering Tariff or Interconnection and Net Metering Agreements, or other similar agreement as applicable. Each Party agrees that, during the Term, it will not seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms.

**Section 4.2 Delivery Point.** System Owner will deliver Output to the physical location where the System connects to the Site Electrical System ("**Delivery Point**"). Title to, risk of loss of, and custody and control of, the Output will pass from System Owner to Host Customer at the Delivery Point.

**Section 4.3 Connection Responsibilities.** Host Customer shall, with the assistance of System Owner, obtain any Interconnection and Net Metering Agreements, approve studies related thereto, and

execute Interconnection and Net Metering Agreements as needed to deliver the Electricity to the Site Electrical System. System Owner is responsible for the interconnection of the System to the Site Electrical System and is solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Host Customer shall at all times own and be responsible for the operation and maintenance of the Site Electrical System at and from the Delivery Point, as provided in Section 12.3.

**Section 4.4 Commercial Operation Date.** System Owner will give Host Customer not fewer than five (5) Business Days' prior written notice that the System will begin Commercial Operation on the date indicated in such notice (such date, the "**Commercial Operation Date**").

**Section 4.5 No Resale by Host Customer.** Host Customer certifies and agrees that it will use Output for Host Customer's electricity needs, and dispose of excess Output beyond Host Customer's electricity needs through the Interconnection and Net Metering Agreement.

**Section 4.6 Taxes and Other Governmental Charges.** To the extent that System Owner or Host Customer becomes responsible for the payment of any tax as a result of the placement, operation or maintenance of the System on the Premises during the Term of this Agreement, System Owner is responsible for the payment of all such taxes and or assessments. Such obligation shall be limited to the construction, operation, and maintenance of the System Assets constructed by the System Owner on the Premises. However, such taxes shall not include property taxes of Host Customer.-

## ARTICLE 5: CONDITIONS PRECEDENT

**Section 5.1 Conditions Precedent to System Owner's Obligations.** Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations under this Agreement are conditioned upon the satisfaction, which shall be determined in the sole discretion of System Owner, of the following conditions ("**Conditions Precedent**") on or before [date] ("**Commercial Operation Deadline**"):

- (a) The completion and approval, as applicable, of all necessary governmental filings or applications for Green Attributes and Environmental Financial Incentives relating to the operation of the System;
- (b) The receipt and any applicable required regulatory approval of all Permits relating to the System; and
- (c) The receipt of final approval of the Interconnection and Net Metering Agreements with the Host Utility.

**Section 5.2 Conditions Precedent to Host Customer's Obligations.** The obligations of Host Customer hereunder are conditioned on and subject to the satisfaction or waiver of the following Conditions Precedent:



- (a) System Owner shall have received all third-party consents necessary to perform its obligations under this Agreement.
- (b) Other

**Section 5.3 Commercial Operation Deadline.**

- (a) System Owner shall use commercially reasonable efforts to (i) meet the Conditions Precedent set out in Section 5.2, (ii) cause installation of the System to be completed and (iii) cause the System to begin Commercial Operation on or before the Commercial Operation Deadline.
- (b) Host Customer shall use commercially reasonable efforts to satisfying the Conditions Precedent set forth in Section 5.2.
- (c) Subject to each Party's obligation to satisfy the Conditions Precedent set out in Sections 5.1 and Section 5.2, to the extent that Commercial Operation has not commenced on or before the Commercial Operation Deadline, the Parties may, upon mutual written agreement, extend the Commercial Operation Deadline by no more than [ ] days.
- (d) If, as a result of an event of Force Majeure or as provided in this Section 5.3, Commercial Operation has not commenced on or before the Commercial Operation Deadline, then subject to Section 5.4, each Party shall have the option to terminate this Agreement upon fifteen (15) Business Days' written notice to the other Party without triggering the default provisions of this Agreement or any liability under this Agreement.

**Section 5.4 Termination for Failure to Meet Commercial Operation Deadline.** If the Commercial Operation Date has not occurred on or before the Commercial Operation Deadline or any extension thereof as provided in Section 5.3(c) or (d) and a Party has not provided notice of termination pursuant to Section 5.3(d), either Party may terminate this Agreement without triggering the default provisions of this Agreement upon fourteen (14) days written notice; *provided*, however, that such right to terminate shall not be available to if the terminating Party's failure to fulfill any material obligations under this Agreement has been the cause of, or resulted in, the failure to achieve Commercial Operation.

**ARTICLE 6: ACCESS AND SPACE PROVISIONS; EMERGENCIES**

**Section 6.1 Adequate Access for System Owner.** System Owner and its Subcontractors, agents, consultants, and representatives shall have access to the Premises, the Site, the System, all System Assets, System operations and any documents, materials, records and accounts relating thereto in accordance with and subject to the terms and conditions of the Site Lease Agreement.

**Section 6.2 Access by Host Customer to System.** Upon not fewer than twenty-four (24) hours' written notice to System Owner, Host Customer may access the Site for purposes of performing routine Site maintenance, safety, and security activities. In the event of an Emergency, immediately upon Host Customer's knowledge of an Emergency or potential Emergency, Host Customer shall provide

telephonic notice to System Owner of the nature of such Emergency, and Host Customer shall have immediate access to the Site. In connection with any access of the Site by Host Customer, its designee(s) or invitees, pursuant to this Section 6.2, Host Customer shall ensure that the operation of the System is not disrupted and the System is not damaged as a result of such access.

**Section 6.3 Emergencies.** In the event of any Emergency, Host Customer and System Owner, as applicable, shall take such action as may be reasonable and necessary to prevent, avoid and mitigate injury, damage or loss to the System, and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report any such incident, including such Party's response thereto, to the other Party.

**Section 6.4 Data Acquisition System.** During the Term, Host Customer shall make available to System Owner broadband internet access at the Premises necessary for System Owner's equipment to continuously monitor the System's performance.

## **ARTICLE 7: OWNERSHIP OF SYSTEM, ENVIRONMENTAL ATTRIBUTES AND FINANCIAL INCENTIVES**

**Section 7.1 System Is Personal Property of System Owner.** At all times throughout the Term, the System shall be and shall remain System Owner's personal property, shall not be a fixture on the Site, and may be removed by System Owner in accordance with the terms and conditions of this Agreement and the Site Lease Agreement. System Owner shall have the right to file in the central and Host records in which the Premises are located financing statements evidencing System Owner's title to the System. Neither the System nor any of its components may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Host Customer. Host Customer shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment except for such liens, encumbrances, pledges, levies, or attachments entered into by the System Owner including but not limited to construction liens. However, in no event shall System Owner allow any encumbrances on the System that prevents System Owner from discharging its obligations under this Agreement, including to provide electricity to Host Customer.

**Section 7.2 System Owner Is Exclusive Owner of System Financial Incentives and Green Attributes.** Host Customer agrees that System Owner is the exclusive owner of all System Financial Incentives and Green Attributes attributable to the System. To the extent not fully held by System Owner, Host Customer assigns its interest System Financial Incentives and Green Attributes to System Owner. System Owner shall own, and may assign or sell in its sole discretion, all right title and interest in all of the Environmental Financial Incentives and Green Attributes.

## **ARTICLE 8: PURCHASE PRICE, INVOICING AND PAYMENT**

**Section 8.1 Solar Electricity Price.** The price for Output shall be on a cents-per-kilowatt-hour alternating current basis, as measured by the Meter, beginning at the Base Contract Price, such rate to be adjusted on each anniversary of the Commercial Operation Date, as set forth in the schedule attached as Exhibit D and incorporated by reference herein (the price for Output as in effect from time to time, the “Solar Electricity Price”).

**Section 8.2 Invoices.** Each month, System Owner shall prepare and provide Host Customer with an invoice for the Output delivered in the prior month. The amount due for the Output shall be determined by multiplying the Solar Electricity Price then in effect by the Output deemed delivered to Host Customer during such month, and each invoice will set forth in reasonable detail the calculation of all amounts owed to System Owner.

**Section 8.3 Payments.** Subject to its contest rights set forth in Section 8.4, Host Customer shall pay the full amount of each invoice on or before the fifteenth (15th) day following receipt thereof (the “Due Date”). All payments made by Host Customer under this Agreement shall be by electronic funds transfer pursuant to the instructions set forth in the attached Exhibit E, which is incorporated by reference herein, or by check payable to [REDACTED] (unless otherwise directed in writing by System Owner) at the address for notices set forth in Section 20.2, as such instructions may be modified by System Owner by written notice to Host Customer. If the Due Date is not a Business Day, payment will be due the next following Business Day.

**Section 8.4 Contest Rights.** Within five (5) Business Days of receipt of any invoice, Host Customer shall notify System Owner in writing in accordance with Section 20.2 of any portion of the invoiced amount that Host Customer has a reasonable basis to dispute and the basis for such Dispute. Any such Dispute will be governed by Section 20.1 below.

## ARTICLE 9: METERING

**Section 9.1 Meter.** System Owner shall install the Meter at the Delivery Point to measure the amount of Output delivered by System Owner to Host Customer. System Owner shall own, operate and maintain the Meter during the Term at its own expense.

**Section 9.2 Meter Reading.** System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Host Customer. The Meter shall be used as the basis for calculating the amounts to be invoiced pursuant to Section 8.2. Upon written request, System Owner will make available to Host Customer the records from the Meter.

### **Section 9.3 Calibration.**

**Section 9.3.1** System Owner shall provide calibration testing of the Meter prior to its installation and at least annually thereafter to ensure the accuracy of the Meter. Host Customer may request that System Owner perform more frequent testing; *provided*, however, that if such tests indicate that the Meter is accurate within two percent (2.0%), then any such testing in excess of the annual tests shall be at Host Customer’s expense. Host Customer shall be entitled to witness such tests.

**Section 9.3.2** If, upon testing, any Meter is found to be accurate or in error within two percent (2%), then previous recordings of such Meter shall be considered accurate in computing deliveries of Output hereunder, but such Meter shall be promptly adjusted to record correctly.

**Section 9.3.3** If, upon testing, any Meter shall be found to be inaccurate by an amount more than plus or minus two percent (2%), then such Meter shall be promptly repaired or adjusted to record properly and any previous recordings by such Meter shall be corrected to zero error. If no reliable information exists as to the period over which such Meter registered inaccurately, it shall be assumed for purposes of correcting previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such Meter was tested and found to be accurate. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number, that difference shall offset amounts owing by Host Customer to System Owner in subsequent month(s). If the difference is a negative number, the difference shall be added to the next month's invoice and paid by Host Customer to System Owner on the Due Date of such invoice.

## **ARTICLE 10: INTERRUPTION OF SERVICE; SCHEDULED OUTAGES**

### **Section 10.1 Interruptions Are Expected.**

### **Section 10.2 Obstructions.**

**Section 10.2.1** Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by Host Customer) any physical obstruction that has or could reasonably be expected to have the effect of reducing Output.

**Section 10.2.2** If any obstruction that could reasonably be expected to materially reduce the Output is proposed to be erected or installed on property other than the Premises that is owned by a person or entity unrelated to Host Customer, Host Customer shall promptly deliver to System Owner copies of any notice relating thereto received by Host Customer, and System Owner shall have the right to intervene or to direct Host Customer to intervene (at System Owner's expense) in any proceeding or otherwise contest the installation or erection of any such obstruction. If any such obstruction is nonetheless installed or erected, System Owner shall have the right to terminate this Agreement without penalty to either Party.

### **Section 10.3 Interruption of Output.**

**Section 10.3.1** Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspecting, maintaining, repairing, replacing, constructing, installing, removing, or altering the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than unexpected interruptions or Emergencies, System Owner shall give Host Customer

notice at least five (5) Business Days before an interruption of Output deliveries and an estimate of the expected duration of the interruption. Both System Owner and Host Customer shall use commercially reasonable efforts to minimize any such interruption or disruption in delivery.

**Section 10.3.2** System Owner shall not be required to supply Output to Host Customer at any time System Owner reasonably believes the Site Electrical System to be unsafe, but in no event shall System Owner have any obligation to inspect or approve the Site Electrical System.

#### **Section 10.4 Repair and Maintenance.**

**Section 10.4.1** System Owner shall use commercially reasonable efforts to maintain the System in good working order, and shall operate the System in accordance with all applicable laws, regulations and ordinances.

**Section 10.4.2** Host Customer shall be solely responsible for the repair and maintenance of the Premises, including the Site and the Site Electrical System; *provided*, however, that if such repair, maintenance or replacement is caused by the negligence or intentional misconduct of System Owner, then System Owner shall be responsible for such costs to the extent of its negligence or intentional misconduct. Host Customer and System Owner shall coordinate such activities so as to minimize disruption to the System.

**Section 10.4.3** Host Customer shall notify System Owner immediately upon Host Customer's knowledge of (a) any material malfunction of or damage to the System and (b) any interruption or alteration of Output to the Premises.

**Section 10.4.4** Host Customer may not adjust, modify, maintain, alter, service or in any way interfere with the System, except in the event of an Emergency; *provided*, however, that Host Customer shall give System Owner immediate telephonic notice in such event.

**Section 10.4.5** System Owner shall bear the costs associated with restoring service following any interruption of the supply of Electricity from the System as a result of System Owner's operation of the System. Host Customer shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is caused by the actions or inactions of Host Customer or the condition of the Site Electrical System.

**Section 10.5 Scheduled Outages.** Host Customer may schedule up to two (2) full twenty-four (24) hour periods of disconnection from the System (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Host Customer shall not be obligated to accept or pay for electricity from the System; provided, however, that Host Customer must notify System Owner in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. If Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, System Owner will reasonably estimate the amount of electricity that would have been delivered to Host Customer during such excess Scheduled

Outages or unscheduled outages and will invoice Host Customer for such amount in accordance with Section 8.2.

## ARTICLE 11: REPRESENTATIONS

**Section 11.1 Mutual Representations.** The Parties make the following mutual representations and warranties:

**Section 11.1.1 Due Organization.** Each Party represents that it is duly organized, validly existing and in good standing under the laws of its respective formation.

**Section 11.1.2 Due Authorization.** Each Party represents that it is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.

**Section 11.1.3 No Consent Required.** Each Party represents that it has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent of any third party, including any Mortgagee.

**Section 11.1.4 Accuracy of Information.** The information provided pursuant to this Agreement as of the Effective Date is true, correct and complete in all material respects.

**Section 11.2 Additional Host Customer Representations.** Host Customer makes the following additional representations and warranties to System Owner:

**Section 11.2.1 No Conflict.** This Agreement is enforceable against Host Customer in accordance with its terms and does not conflict with or violate the terms of any other agreement to which Host Customer is a party or by which Host Customer is bound, including, if applicable, Host Customer's organizational documents and any agreement pursuant to which Host Customer has financed the Premises or the Site. This includes any agreement with an Alternative Retail Electric Supplier (as defined in 220 ILCS 5/16-102) or an Agent, Broker, or Consultant (as defined in 220 ILCS 5/16-115C).

**Section 11.2.2 Ownership and Control over Premises.** Host Customer has sole authority to authorize construction and operation of all components of System.

**Section 11.3 Additional System Owner Representations.** System Owner makes the following additional representations and warranties to Host Customer:

**Section 11.3.1 No Conflict.** This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of any other agreement to which System Owner is a party or by which System Owner is bound, including its organizational documents.

**Section 11.3.2 Ability to Perform.** System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

**Section 11.3.3 Delivery of Output.** System Owner will deliver to Host Customer the Output free and clear of all liens, security interests, claims and encumbrances, or any interest therein, or thereto, by any Person.

## ARTICLE 12: COVENANTS OF THE PARTIES

**Section 12.1 Permits.** During the Term, System Owner shall obtain and maintain in effect all Permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the Host Utility in connection with the interconnection and operation of the System. Those permits include, but are not limited to:

- Construction permits;
- Certification of all entities (including, as applicable, System Owner or any subcontractors) pursuant to 83 Ill. Admin. Code Part 468 as Distributed Generation Installers to the extent required under Part 468 and 220 ILCS 5/16-128A;
- Enrollment in the Net Metering program pursuant to 83 Ill. Admin. Code Part 465 of the Host Utility or Electricity Provider, as applicable;

**Section 12.2 Compliance.** During the Term, the applicable Party, as described in Section 12.1, (a) shall comply with, maintain in effect, and promptly notify the other Party of any change in status to, all such Permits, approvals, and authorizations; (b) shall maintain the Interconnection and Net Metering Agreements; and (c) shall meet all requirements imposed by the Host Utility, Electricity Provider (if different), and any federal, state or local government agencies with respect to the Interconnection and Net Metering Agreements and to the sale and purchase of the Output.

**Section 12.3 Upgrades.** Host Customer shall perform (or arrange for the performance of) all normal maintenance and upgrades to the Site Electrical System to maintain the Site Electrical System in good working order, and such other maintenance and upgrades as may be required by the Host Utility or applicable laws, regulations, ordinances, and codes.

## ARTICLE 13: DEFAULT; LENDER CURE RIGHTS

**Section 13.1 Events of Default.** An "**Event of Default**" means, with respect to a Party (a "**Defaulting Party**"), the occurrence of any of the following:

**Section 13.1.1 System Owner Failure to Deliver.** The failure to deliver or cessation by System Owner of delivery of Electricity to Host Customer for a continuous period of five (5) days unless (i)

System Owner's performance is excused by a Force Majeure event, or by action or inaction of Host Customer, or otherwise as provided in this Agreement, and System Owner is diligently pursuing a cure, (ii) System Owner is willing to pay Host Customer during the term of such non-performance liquidated damages equal to the positive difference, if any, of the cost of replacement power less the per kwh price for Output provided in this Agreement, or (iii) System Owner is (A) unable to resume delivery within 5 days and (B) is taking reasonable steps to resume delivery, but in no event shall delivery fail to resume within twenty one (21) days of cessation.

**Section 13.1.2 Host Customer Failure to Pay.** Host Customer's failure to pay an invoice following the Due Date, and such failure continues for a period of thirty (30) Business Days after System Owner provides written notice of such nonpayment to Host Customer.

**Section 13.1.3 Material Misrepresentation as of Effective Date.** If the representations and warranties and other statements made by a Party hereunder or as part of the bidding process misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Non-Defaulting Party or (b) the discovery or determination by the Defaulting Party of the misrepresentation; *except* that if the Defaulting Party commences an action to cure such misrepresentation within such sixty (60)-day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional sixty (60) days.

**Section 13.1.4 Failure to Meet Material Obligations.** Except as otherwise expressly set out in this Article 13, if a Party fails to perform fully any material provision of this Agreement and either (a) such failure continues for a period of thirty (30) days after written notice of such nonperformance or (b) if the Defaulting Party commences an action to cure such failure to perform within such sixty (60-) day period, and thereafter proceeds with all due diligence to cure such failure, and such failure is not cured within sixty (60) days after the expiration of the initial sixty (60)-day period.

**Section 13.2 Remedies for Event of Default.** If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("**Non-Defaulting Party**") shall, without limiting the rights or remedies available to the Non-Defaulting Party under this Agreement, applicable law or in equity, have the right: (a) by notice to the Defaulting Party, to designate a date, not earlier than the date of such notice and not later than thirty (30) Business Days after such date, as an early termination date ("**Early Termination Date**") in respect of this Agreement; (b) to withhold any payments due to the Defaulting Party under this Agreement until such Event of Default is resolved; and (c) to suspend performance due to the Defaulting Party under this Agreement until such Event of Default is resolved. If the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date. Any Host Customer remedies in the event of a System Owner default are subject to Lender cure rights as set forth in Section 19.3.

**Section 13.3 Additional Host Customer Rights Upon Termination for Default.** If Host Customer is the Non-Defaulting Party, and Host Customer elects to terminate this Agreement as provided in Section 13.2, Host Customer shall be entitled, in its sole and absolute discretion, either to (a) require that System Owner remove and properly dispose of the System and System Assets, including any and all



related equipment and materials, at System Owner's sole cost and expense (or to remove and have stored the System at System Owner's sole cost and expense, if System Owner fails to commence to remove the System within sixty (60) days after the Early Termination Date), or (b) exercise the Purchase Option provided in Article 15.

#### **Section 13.4 Additional System Owner Rights Upon Termination for Default.**

**Section 13.4.1 Early Termination Fee.** If System Owner is the Non-Defaulting Party and System Owner elects to terminate this Agreement as provided in Section 13.2, then System Owner shall be entitled, without limiting System Owner's rights or remedies available under this Agreement, to receive from Host Customer a fee, as described on Exhibit C and incorporated by reference herein, that is intended to reflect System Owner's direct damages from Host Customer's default (the "**Early Termination Fee**") and is not intended to be a penalty. In such event, System Owner shall remove the System at System Owner's sole cost and expense (except for cost to repair damage to the Premises due to System Owner's negligence during such removal, which shall be at System Owner's sole cost and expense).

**Section 13.4.2 No Cross Default.** The Parties acknowledge and agree that any default by a party to the Site Lease Agreement shall not constitute an Event of Default under this Agreement, and that any such default under the Site Lease Agreement shall be addressed according to the terms of the Site Lease Agreement.

**Section 13.5 Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each Party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other Party.

### **ARTICLE 14: FORCE MAJEURE**

**Section 14.1 Force Majeure.** Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, then such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable.

**Section 14.2 Termination for Force Majeure.** Either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting such other Party has been in existence for a period of one hundred eighty (180) or more consecutive days, unless such Force Majeure Event ceases prior to the expiration of such thirty (30-) day period.

## ARTICLE 15: PURCHASE OPTION; EXPIRATION

**Section 15.1 Host Customer Purchase Option.** For and in consideration of the payments made by Host Customer under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, System Owner hereby grants Host Customer the right and option to purchase all of System Owner's right, title and interest in and to the System and System Assets at Fair Market Value, as defined below, on the terms set forth in this Article 15 (the "**Purchase Option**"). The Purchase Option is irrevocable by System Owner and may be exercised by Host Customer as follows: (a) at the conclusion of the Term, including any Extension Period; (b) on the sixth (6th), tenth (10th) or fourteenth (14th) anniversary of the Commercial Operation Date; or (c) as an additional remedy in the Event of Default by System Owner, as described in Section 13.3.

**Section 15.2 Purchase Price.** The price payable by Host Customer for the System and System Assets upon execution of the Purchase Option shall be equal to the "**Fair Market Value**," which shall be determined in an arm's-length transaction between the Parties pursuant to which Host Customer shall be under no compulsion to purchase the System or the System Assets; or, if no agreement is reached between the Parties, as such Fair Market Value is determined by an Independent Appraisal pursuant to Section 15.5 (the "**Purchase Price**").

**Section 15.3 Host Customer Request for a Determination of Purchase Price.** No fewer than (a) one hundred eighty (180) days before the end of the Term, including any Extension Period, or the sixth (6th), tenth (10th) or fourteenth (14th) anniversary of the Commercial Operation Date; or (b) upon an Event of Default by System Owner under Article 13, Host Customer shall have the right to provide a notice to System Owner requiring a determination of the Purchase Price pursuant to Section 15.4.

**Section 15.4 Determination of Purchase Price.** Within thirty (30) days of System Owner's receipt of a notice provided under Section 15.3, System Owner and Host Customer shall mutually agree upon a Purchase Price for the System and System Assets, an Independent Appraisal shall be obtained pursuant to Section 15.5 to determine the Purchase Price at the discretion of either party.

**Section 15.5 Independent Appraiser to Determine the Purchase Price.**

**Section 15.5.1 Selection of Independent Appraiser.** No more than ten (10) days following agreement to obtain an Independent Appraisal, the Parties shall agree upon the identity of an independent appraiser to determine the Fair Market Value of the System and System Assets (the "**Independent Appraiser**"). If the Parties are not able to mutually agree upon the identity of the Independent Appraiser, then the Parties shall each select an appraiser who has experience in the valuation of commercial solar PV systems. The appraisers selected by each Party shall confer and independently determine the identity of the Independent Appraiser.

**Section 15.5.2 Preliminary Determination.** The Independent Appraiser shall make a preliminary determination of the Fair Market Value of the System and System Assets (the "**Preliminary Determination**").

**Section 15.5.3 Final Determination.** The Independent Appraiser shall provide such Preliminary Determination to System Owner and Host Customer, together with all supporting documentation detailing the calculation of the Preliminary Determination. Each of System Owner and Host Customer shall have the right to object to the Preliminary Determination within ten (10) days of receiving such Preliminary Determination. Within ten (10) Business Days after (i) receiving any such notice of objection to the Preliminary Determination or (ii) receiving no such notice of objection to the Preliminary Determination, the Independent Appraiser shall issue the Independent Appraiser's final determination ("**Final Determination**") to System Owner and Host Customer, which shall specifically address any objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

**Section 15.6 Costs and Expenses of Independent Appraisal.** If an Independent Appraisal is requested by the Host Customer, then Host Customer shall be responsible for payment of the costs and expenses associated with obtaining the Independent Appraisal. If an Independent Appraisal is requested by the System Owner, then the System Owner shall be responsible for payment of the costs and expenses of any Independent Appraiser engaged by the Parties.

**Section 15.7 Exercise of Purchase Option.** Host Customer shall exercise the Purchase Option, at the Purchase Price set forth in the Final Determination or as mutually agreed upon by the Parties, within twenty (20) Business Days after the date of the Final Determination, or, if Host Customer and System Owner have mutually agreed upon a Purchase Price, the date that the Parties agree upon a Purchase Price (such period, the "**Exercise Period**"). Host Customer must exercise its Purchase Option during the Exercise Period by providing a notice (an "**Exercise Notice**") to System Owner. Once Host Customer delivers its Exercise Notice to System Owner, such exercise shall be irrevocable.

Upon at least three (3) Business Days' prior written notice from Host Customer at any time during the Exercise Period, System Owner shall make the System, including records relating to the operations, maintenance, and warranty repairs, available to Host Customer for its inspection during normal business hours.

**Section 15.8 Transfer Date.** The closing of any sale of the System and System Assets (the "**Transfer Date**") pursuant to this Article will occur no later than thirty (30) Business Days following the date on which Host Customer provides its Exercise Notice. With the exception of any provisions that expressly survive termination of this Agreement, System Owner's duties and obligations under this Agreement shall terminate on the Transfer Date.

**Section 15.9 Terms of System Purchase.** On the Transfer Date: (a) System Owner shall surrender and transfer to Host Customer all of System Owner's right, title, and interest in and to the System and System Assets as of the Transfer Date, free and clear of any Liens, and shall retain all liabilities arising

from or related to the System and System Assets before the Transfer Date; (b) Host Customer shall pay the Purchase Price, by certified check, bank draft or wire transfer, and shall assume all liabilities arising from or related to the System from and after the Transfer Date; and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of warranties, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System and System Assets in Host Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System and System Assets as is to Host Customer. Upon such execution and delivery of the foregoing documents and payments, this Agreement will terminate, and Host Customer will own the System, System Assets, and all Environmental Financial Incentives and Green Attributes relating to the System.

**Section 15.10 System Removal at Expiration.** If Host Customer does not exercise its Purchase Option at the end of the Term, as may be extended pursuant to Section 2.1.2, System Owner shall remove the System and System Assets from the Premises at System Owner's expense within one hundred twenty (120) days after the expiration of the Term. To the extent that System Owner removes any or all of the System and System Assets, System Owner shall make or have made any repairs to the Premises to the extent necessary to repair any adverse impact such removal directly causes to the Premises.

## **ARTICLE 16: LIABILITY; INDEMNIFICATION**

### **Section 16.1 Liability and Responsibility.**

**Section 16.1.1 System Owner.** System Owner agrees to pay Host Customer for the reasonable costs and expenses directly relating to the breach of any representation, warranty, or covenant of System Owner hereunder. System Owner further agrees to pay for the reasonable costs and expenses of any repairs to or loss of the Premises or Host Customer's personal property or fixtures on the Premises, to the extent resulting from negligence or intentional misconduct of System Owner or any of its contractors, second-tier contractors, agents, employees, partners, owners, subsidiaries or affiliates.

**Section 16.2 Indemnification.** The System Owner shall defend, indemnify, and hold harmless the Host Customer and the Host Customer's elected and appointed officials, agents and employees from and against all loss, damage, expense, and liability resulting from injury to or death of persons, and damage to or loss of real or personal property, to the extent caused by or arising out of the willful misconduct or negligent acts or omissions of the System Owner, including for any claim or liability resulting from any trespass or other access to the System not authorized in this Agreement.

**Section 16.3 Defense of Claims.** An Indemnifying Party shall have the right to defend an Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or

actions. No Indemnified Party shall take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and no Indemnifying Party shall settle any such claims without the Indemnified Party's prior written consent, unless the settlement includes a full and unconditional release of claims against the Indemnified Party.

#### **Section 16.4 Limitation of Liability.**

DAMAGES UNDER THIS CONTRACT SHALL BE LIMITED TO THE VALUE OF THE SALE OF OUTPUT UNDER THE AGREEMENT. OTHER THAN AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, WHETHER CAUSED BY NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INCLUDING DAMAGES IN THE NATURE OF LOST PROFITS OR REVENUES, LOSS OF USE OF FACILITIES OR EQUIPMENT OR INABILITY TO PERFORM CONTRACTS WITH THIRD PARTIES (OTHER THAN FOR ANY DAMAGES INCURRED UNDER SUCH CONTRACTS), OTHER THAN FOR DAMAGES RESULTING FROM THE CLAIMS OF PERSONS NOT A PARTY TO THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT AFFECT OR LIMIT A PARTY'S RIGHT TO RECOVER THE EARLY TERMINATION FEE AS SET FORTH IN SECTION 13.4. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

### **ARTICLE 17: INSURANCE**

**Section 17.1 Mutual Insurance.** System Owner shall, at its own cost and expense, maintain, (or shall cause its Subcontractors to maintain), with a company or companies licensed or qualified to do business in the State of [REDACTED], commercial general liability insurance with limits not less than \$1,000,000 for bodily injury in any one occurrence and \$1,000,000 for property damage in any one occurrence. System Owner shall name and Customer Host as an additional insured in each such policy. For the avoidance of doubt, System Owner's property insurance shall cover the System and System Assets. System Owner's commercial general liability insurance policy shall also be endorsed to include coverage for products, completed operations, and independent contractors.

**Section 17.2 System Owner's Additional Insurance.** System Owner shall maintain (and shall cause its Subcontractors to maintain), with a company or companies licensed or qualified to do business in the State of [REDACTED], the following insurance coverage:

**Section 17.2.1 Worker's Compensation and Employer's Liability Insurance.** System Owner shall maintain worker's compensation and employer's liability insurance, including Stop Gap coverage,

in compliance with applicable laws. The limits of employers' liability insurance shall not be less than \$1,000,000.

**Section 17.2.2 Property and Casualty Damage Coverage.** System Owner will maintain Property and Casualty Damage Coverage in the amount of the aggregate replacement value of all System Assets.

**Section 17.2.3 Comprehensive Automobile Liability Coverage.** System Owner will maintain, in an amount not less than \$1,000,000.00, comprehensive automobile liability coverage. Such coverage will include all owned, non-owned, leased and/or hired motor vehicles that may be used by System Owner in connection with the services required under this Agreement.

**Section 17.2.4 Excess Liability Coverage.** System Owner will maintain excess liability coverage in the amount of \$1,000,000.00 in the form of an umbrella policy rather than a following form excess policy. This policy or policies shall be specifically endorsed to be excess of the required coverages in this Article 17.

**Section 17.2.5 Additional Insured.** All System Owner insurance coverages required by this Article 17, with the exception of Workers' Compensation, shall identify Host Customer, its employees, agents, officers and directors as additional insured hereunder.

**Section 17.2.6 Evidence of Insurance.** Prior to commencing any construction or deliveries under this Agreement, System Owner and Host Customer shall each furnish to the other one or more certificates of insurance evidencing the existence of the coverage set forth in Sections 17.1 and 17.2, as applicable. Each certificate shall state that the insurance carrier will give System Owner and Host Customer at least thirty (30) days written notice of any cancellation or material change in the terms and conditions of such policy during the periods of coverage.

## **ARTICLE 18: SYSTEM RELOCATION; ASSIGNMENT**

**Section 18.1 System Relocation.** If Host Customer ceases to conduct operations at or vacates the Premises before the expiration of the Term, then upon not fewer than one hundred twenty (120) days' prior written notice, Host Customer shall have the option to provide System Owner with a mutually agreeable substitute premises located within the same Host Utility territory as the Premises. In connection with such substitution, this Agreement will be amended to reflect the substitute premises. Host Customer shall pay all costs associated with relocation of the System, including but not limited to all costs and expenses incurred by or on behalf of System Owner in connection with removal of the System from the Premises, and installation and testing of the System at the substitute premises and all applicable interconnection fees and expenses. System Owner shall remove the System from the vacated Premises before the termination of Host Customer's ownership, lease or other rights to use such Facility. If Host Customer is unable to provide such substitute premises and to relocate the System as provided, any early termination will be treated as a default by Host Customer.

**Section 18.2 Assignment by Host Customer.** Host Customer shall not assign this Agreement or delegate Host Customer's duties and obligations hereunder without the consent of System Owner, which consent not to be unreasonably withheld. Without limiting the generality of the foregoing, in connection with any conveyance by Host Customer of any interest in Premises that impacts (i) the Interconnection Agreement, (ii) rights or access to the System or System Assets, or (iii) ownership or operation of Host Customer's electric system excluding the System, Host Customer may (a) upon demonstrating to the satisfaction of System Owner the financial ability of such fee purchaser to satisfy the Output purchase obligations set forth in Article 4, assign this Agreement to the fee purchaser of the Premises, pursuant to an assignment and assumption agreement reasonably acceptable to System Owner; (b) pay the applicable Early Termination Fee described on Exhibit C; or (c) if such sale and conveyance occurs after the sixth (6<sup>th</sup>) anniversary of the Commercial Operations Date, purchase the System pursuant to Article 15.

**Section 18.3 Assignment by System Owner.**

**Section 18.3.1** Subject to Section 18.3.2, System Owner may, with the consent of Host Customer (which consent shall not be unreasonably withheld), assign its interest in, and be released from its obligations under, this Agreement to an assignee, as long as the assignee shall expressly assume this Agreement and agree to be bound by the terms and conditions hereof.

**Section 18.3.2** System Owner may, without the consent of Host Customer, (a) transfer, pledge or assign all or substantially all of its rights and obligations hereunder as security for any financing and/or sale leaseback transaction or to an affiliated special purpose entity created for the financing or tax credit purposes related to the System, (b) transfer or assign this Agreement to any Person or entity succeeding to all or substantially all of the assets of System Owner; *provided*, however, that any such assignee shall agree to be bound by the terms and conditions hereof, (c) assign this Agreement to one or more affiliates; *provided*, however, that any such assignee shall agree to be bound by the terms and conditions hereof or (d) assign its rights under this Agreement to a successor entity in a joint venture, merger or acquisition transaction; *provided*, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Host Customer agrees to provide acknowledgements, consents, or certifications reasonably requested by any Lender in conjunction with any financing.

## **ARTICLE 19: LENDER PROTECTION**

**Section 19.1 Notice of Lender.** System Owner shall notify Host Customer of the identity of any Lender within thirty (30) days of any such party becoming a Lender and shall deliver to Host Customer all applicable contact information for such Lender.

**Section 19.2 Lender Collateral Assignment.** Upon notice and delivery by System Owner pursuant to Section 19.1 of the name and contact information for any Lender, then Host Customer hereby:

**Section 19.2.1** Acknowledges the collateral assignment by System Owner to the Lender, of System Owner's right, title and interest in, to and under this Agreement, as consented to under Section 19.2.2;

**Section 19.2.2** Acknowledges that any Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to System Owner's interests in this Agreement;

**Section 19.2.3** Acknowledges that it has been advised that System Owner has granted a security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System; and

**Section 19.2.4** Acknowledges that any Lender shall be an intended third-party beneficiary of this Article 19.

**Section 19.2.5** Any security interest filing by Lender shall not create any interest in or lien upon the Premises underlying the System Assets or the interest of Host Customer therein and shall expressly disclaim the creation of such an interest or a lien.

**Section 19.3 Lender Cure Rights Upon System Owner Default.** Upon an Event of Default by System Owner, Host Customer shall deliver to each Lender of which it has notice a copy of any notice of default delivered under Section 13.1. Following the receipt by any Lender of any notice that System Owner is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and Host Customer agrees to accept any cure tendered by the Lenders on behalf of System Owner in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy an Event of Default by System Owner, or cause the same to be remedied, as is given to System Owner after System Owner's receipt of a notice of default hereunder; *provided*, however, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the System (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure; and (b) the Lender shall not be required to cure those Events of Default that are not reasonably susceptible of being cured or performed by the Lender. The Lender shall have the absolute right to substitute itself or an affiliate for System Owner and perform the duties of System Owner hereunder for purposes of curing such Event of Default. Host Customer solely expressly consents to such substitution, and authorizes the Lender, its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of System Owner, but subject to the terms and conditions of this Agreement.

## **ARTICLE 20: MISCELLANEOUS**

**Section 20.1** Governing Law; Jurisdiction; Dispute Resolution; Waiver of Jury Trial



**Section 20.1.1 Governing Law.** This Agreement is made and shall be interpreted and enforced in accordance with the substantive laws of the state of Illinois.

**Section 20.1.2 Jurisdiction.** Subject to Section 20.1.4 below, the Parties hereby consent and submit to the personal jurisdiction of the state court located in \_\_\_\_\_ [County], Illinois.

**Section 20.1.3 Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, EACH OF SYSTEM OWNER AND HOST CUSTOMER HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 20.1.4 Disputes.**

**Section 20.1.4.1 Procedure.** If the Parties are unable to resolve a dispute, controversy or claim arising out of or relating to this Agreement or any breach, termination or invalidity hereof (a "Dispute") within ten (10) Business Days after one Party's receipt of notice of such Dispute from the other Party, then each Party shall immediately designate a an employee or designee with authority to negotiate on behalf of that Party. If the employees or designees do not agree upon a resolution of the Dispute within thirty (30) days of the referral to them, then the Parties agree to use good faith efforts to settle the dispute by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Rules and conducted in \_\_\_\_\_, \_\_\_\_\_, before resorting to litigation. The Parties will share the mediator fee and any filing fees equally. This agreement to mediate will be specifically enforceable by any court of competent jurisdiction. Written and signed agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof. If the Parties are unable to resolve any dispute pursuant to mediation, then upon conclusion of any mediation proceeding, either Party shall have the right to pursue any and all remedies available under this Agreement, at law or in equity in a court of competent jurisdiction, as provided in Section 20.1.3. Nothing in this Section 20.1.4 shall prevent the Parties from seeking relief from a court of competent jurisdiction.

**Section 20.1.4.2 Termination During Dispute.** Notwithstanding the requirements of this Section 20.1, either Party may terminate this Agreement as provided in this Agreement. For the purposes of this Article 20, the issue of whether such a termination is proper shall not be considered a Dispute. Neither the giving of notice of a Dispute nor the pendency of any dispute resolution process

shall extend any notice or cure period described in this Agreement or any period within which a Party must act as described in this Agreement.

**Section 20.1.4.3 Performance During Dispute.** Subject to the rights of the Parties to terminate this Agreement as set forth herein, each Party shall continue to perform its obligations under this Agreement during the pendency of any Dispute. Either Party may seek preliminary and permanent injunctive relief, including specific performance or other interim or permanent relief, if the Dispute involves (a) threatened or actual breach by the other Party of its confidentiality obligations under this Agreement or (b) risk to the safety or security of persons or property, if in such Party's judgment such relief is necessary to prevent injury or damage. Despite any such action by either Party, the Parties shall continue to proceed in good faith to resolve the Dispute.

**Section 20.2 Notices.** Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered to the Party to whom notice is to be given (a) personally, (b) by electronic mail (receipt acknowledgment), (c) by a recognized overnight delivery service or (d) by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the to the Party to whom notice is to be given at the address stated below its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 20.2.

If to **SYSTEM OWNER:**

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

With a copy to System Owner's legal representative:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

If to **HOST CUSTOMER:**

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

With a copy to Host Customer's legal representative:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

**Section 20.3 Amendments.** No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both System Owner and Host Customer or their respective successors in interest.

**Section 20.4 Records.** Each Party hereto shall keep complete and accurate records of its operations hereunder for a minimum of five (5) years and shall maintain such data as may be necessary to

determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine, at its sole cost, all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

**Section 20.5 Further Assurances.** Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, shall, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement or to arrange financing for the System. Without limiting the generality of the foregoing, Host Customer agrees to cooperate with System Owner in obtaining and filing such subordination, non-disturbance and consent agreements from Host Customer's mortgagees and lienholders as System Owner may reasonably request in connection with this Agreement.

**Section 20.6 Severability.** If and for so long as any provision of this Agreement is deemed invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only so far as necessary to give effect to the installation of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the balance of this Agreement.

**Section 20.7 Counterpart Execution.** The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. A fax or scanned transmission of a signature page shall be considered an original signature page. At the request of a Party, a Party shall confirm its faxed or scanned signature page by delivering an original signature page to the requesting Party.

**Section 20.8 Service Agreement.** The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

**Section 20.9 Headings.** The headings in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the clauses to which they pertain.

**Section 20.10 No Waiver.** No waiver of any of the terms and conditions of this Agreement is effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof will be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

**Section 20.11 Survival.** Any provisions necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including but not limited to Section 20.1, Section 20.12 and Article 16.

**Section 20.12 Marketing and Confidential Information.**

**Section 20.12.1** The Parties agree and acknowledge that each Party may promote the installation and use of the System by any means. All public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Green Attributes and Environmental Financial Incentives, and any related reporting rights.

**Section 20.12.2** Each Party shall provide to the other Party, in advance of distribution to any Person, a copy of any marketing or promotional material related to the System.

**Section 20.12.3** Host Customer agrees that this Agreement and its performance by both Parties are proprietary and confidential to System Owner. Without the prior written consent of System Owner, Host Customer shall not share information provided by System Owner to the Host Customer from the Meter, or any other performance data related to the System with any third parties. Host Customer shall not disclose to any third parties the terms of this Agreement or costs incurred by either Party under this Agreement without System Owner's prior written consent.

**Section 20.12.4** If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release such confidential information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose such confidential information to accountants in connection with audits. Notwithstanding the foregoing, System Owner acknowledge that Host Customer is a public entity subject to certain public records disclosure statutes and regulations. System Owner further acknowledges that although the [\_\_\_\_\_ (insert applicable state or local law) Public Records Act] recognizes that certain confidential trade secret information may be protected from disclosure, Host Customer may not be in a position to establish that the information that System Owner provides as confidential is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", Host Customer will provide System Owner with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

**Section 20.13 No Confidentiality Regarding Tax Structure or Treatment.** Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all Persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section

6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.

**Section 20.14 Entire Agreement.** This Agreement, including all exhibits and attachments hereto (all of which are incorporated by reference herein), constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any provisions on the same subject contained in any other agreement among the Parties, whether written or oral, prior to the Effective Date.

**Section 20.15 No Third-Party Beneficiaries.** Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

**Section 20.16 Waiver of Sovereign Immunity.** For the purposes of this Agreement, Host Customer acknowledges and agrees that (a) its execution and delivery of this Agreement and (b) its performance of the actions contemplated by this Agreement, constitute private and commercial acts rather than public or governmental acts. To the extent that, in any jurisdiction, Host Customer in respect of itself or its assets, properties or revenues, shall be entitled to any immunity from suit, from the jurisdiction of any court, from attachment prior to judgment, from attachment in aid of execution of judgment, from execution, or enforcement of a judgment, or from any other legal or judicial process or remedy, Host Customer hereby (i) expressly and irrevocably agrees not to claim or assert, and expressly and irrevocably waives, any such immunity to the fullest extent permitted by the laws of such jurisdiction and (ii) consents generally to the giving of any relief or the issue of any process in connection with any proceeding.

**Section 20.17 Event of Non-Appropriation.**

[TO BE INCLUDED, IF AT ALL, BASED ON MUNICIPAL STATUTORY REQUIREMENTS.]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the duly authorized representatives of each of the Parties have executed this [Solar Energy Power Purchase and Sale Agreement / Solar Energy Services Agreement], effective as of the Effective Date.

**HOST CUSTOMER:**

**SYSTEM OWNER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**Description of the Premises**

[To be inserted.]

**EXHIBIT A-1**  
**Description and Depiction of the Site**

[To be inserted.]



**EXHIBIT B**  
**Description of the System**

[To be inserted.]

**EXHIBIT C**  
**Early Termination Fee**

[To be inserted.]

The Early Termination Fee shall be calculated in accordance with the following:

Early Termination Occurs in Year [of Term]	Early Termination Fee Where Host Customer Does Not Take Title to System (includes removal costs)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Purchase Date Occurs following the Anniversary of the Commercial Operation Date	Early Termination Fee Where Host Customer Takes Title to System (does not include removal costs)
1 <sup>st</sup> Anniversary	
2 <sup>nd</sup> Anniversary	
3 <sup>rd</sup> Anniversary	
4 <sup>th</sup> Anniversary	
5 <sup>th</sup> Anniversary	
6 <sup>th</sup> Anniversary	
7 <sup>th</sup> Anniversary	
8 <sup>th</sup> Anniversary	
9 <sup>th</sup> Anniversary	
10 <sup>th</sup> Anniversary	
11 <sup>th</sup> Anniversary	
12 <sup>th</sup> Anniversary	
13 <sup>th</sup> Anniversary	
14 <sup>th</sup> Anniversary	
15 <sup>th</sup> Anniversary	
16 <sup>th</sup> Anniversary	
17 <sup>th</sup> Anniversary	
18 <sup>th</sup> Anniversary	
19 <sup>th</sup> Anniversary	
20 <sup>th</sup> Anniversary	

**EXHIBIT D**  
**Solar Electricity Price Schedule**

[To be inserted.]

Alternative 1: The Solar Electricity Price with respect to each System under the Agreement shall be as follows:

Year of Term	kWh Rate[*] (\$/kWh)	Year of Term	\$/kWh Rate[*] (\$/kWh)
<b>1</b>		<b>11</b>	
<b>2</b>		<b>12</b>	
<b>3</b>		<b>13</b>	
<b>4</b>		<b>14</b>	
<b>5</b>		<b>15</b>	
<b>6</b>		<b>16</b>	
<b>7</b>		<b>17</b>	
<b>8</b>		<b>18</b>	
<b>9</b>		<b>19</b>	
<b>10</b>		<b>20</b>	

Calculated based on Base Contract Price multiplied by \_\_\_% inflation factor for each year.

Alternative 2: For any year of this Agreement, the Solar Electricity Price payable by Host Customer is the sum of Sections 1 and 2 below (after the escalation percentage factor in Section 2 below is converted into a dollar amount for the applicable year of computation). For the period prior to the first anniversary of the Commercial Operation Date, the amount in Section 2 below shall be \$\_\_\_\_\_.

(a) Cost of Electricity, per kWh, pursuant to this Agreement, for the period (a) from the date of the first delivery by System Owner to Host Customer of Electricity from the System (b) to, but excluding, the first anniversary of the Commercial Operation Date: \$\_\_\_\_\_/ kWh (“Base Contract Price”).

(b) Annual escalation (expressed as a fixed percentage increase from the prior year's Solar Electricity Price) applicable as of each anniversary date of the Commercial Operation Date for the following year to, but not including, the next succeeding anniversary of such Commercial Operation Date: [\_\_\_\_\_] percent (\_\_\_ %).

(i) This escalation factor commences on the first anniversary of the Commercial Operation Date, and ends at the end of the Term, unless further adjusted in accordance with the terms of any Extension Period pursuant to this Agreement.

(c) The Parties further agree to the following:

- (i) Although the percentage of escalation is fixed in Section 2, since it is based on the prior year's Solar Electricity Price, which is itself increasing on an annual basis, the actual dollar amount of each year's escalation increases.
- (ii) The Solar Electricity Price may be further escalated for any increase in taxes assessed or levied against the System Assets, which taxes shall be imposed by or on behalf of Host Customer.

**EXHIBIT E**  
**Electric Funds Transfer Instructions**

[To be inserted.]

**EXHIBIT F**  
**Solar Energy Facility Site Lease Agreement**

[To be inserted]