

PPAs

SOLAR POWER PURCHASE AGREEMENTS

A Toolkit for Local
Governments



IREC

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2 Introduction

Among local government entities that wish to install solar, the use of retail solar power purchase agreements (PPAs), sometimes referred to as solar service agreements (SSAs) or just “PPAs”, has become increasingly common over the last several years. While PPAs are not the only financing option for local government solar projects, and in some cases are simply not an option, they have become an attractive way for local governments to pursue solar. However, this trend has not been without bumps in the road. Not all local initiatives have been successful, and in some cases even those that have ultimately come to fruition have taken years to move from the Request for Proposals (RFP) stage through execution of a PPA (and other associated legal documents), to the actual completion of individual projects.

While the obstacles for individual projects are at times somewhat case-specific, at a high level they frequently originate in the terms of the PPA itself, which must accommodate the needs of both the provider and the power purchaser, and allocate rights and risks in a way that are mutually acceptable. Many early adopters were forced to learn this process on the fly, resulting in failed RFPs or prolonged negotiations that carried significant transaction costs and ultimately depleted the value of the project for all participants (i.e., death by negotiation). This can be particularly troublesome for projects that are relatively small or that are financially compelling only if transaction costs can be minimized. In other words, each project is unique in both a technical and financial viability sense and some are more robust in the face of obstacles than others. That said, all projects could benefit from streamlining and standardization. The old adage “A penny saved is a penny earned” applies as well to solar PPAs as it does many other situations.

The purpose of this Toolkit is to provide a full suite of resources that can be used by local governments interested in pursuing solar under a PPA arrangement. It focuses on the legal documents themselves, as represented by annotated model PPA and site right documents. It also contains more general guidance on RFP design and implementation, as well as further resources such as previously published reports and fact sheets, other model PPAs, prior webinars, example RFPs and executed PPAs. The Additional Resources section contains a brief a summary of each resource and a link to the resource itself.

The Toolkit is designed to be used as a comprehensive source of guidance for local governments interested in pursuing PPA arrangements, or to provide examples and background on particular subjects or materials that serve a specific need (e.g., a model site lease). Readers should note that in the interest of making the resources in this document as accessible as possible, we occasionally use in-text links as opposed to footnotes or endnotes for some documents, and have embedded links to items in the Additional Resources section as appropriate instead of using standard reference citations.

3 Background on PPAs and Toolkit Contents

3.1 Background on PPAs

At its most basic, a retail solar PPA is a long-term contract to purchase power from a third-party owner and operator of a solar energy generation system.¹ This contrasts with a “direct-ownership” arrangement, where the local government itself owns a solar project. The system typically provides electricity to serve an electric load on the host site (e.g., a school or local government building) and as such is installed “behind the meter” of an existing structure and operated under a net metering arrangement.² While PPAs are fairly complex documents that describe the obligations of each party at length, the most basic components are the electricity price, how it may change over time, and the term of the agreement (typically 15 – 25 years). The details of pricing mechanisms vary, but the general intent is that, however designed, the price structure will offer significant electricity cost savings over the life of the contract. As discussed in greater detail in the following section on site right agreements, the PPA itself must either include, or be supplemented with, provisions that grant the system owner/power seller access to the site.

Retail solar PPAs are often the model of choice for local government solar projects. While the relative attractiveness may vary based on local circumstances, PPAs are generally considered to offer the following advantages. [see also the [NREL PPA Checklist](#).]

- Low or zero up-front costs;
- The ability for a tax-exempt entity to benefit indirectly (i.e., lower electricity prices) from federal tax incentives that would otherwise be unavailable;
- Predictable electricity prices over an extended term;
- The ability to out-source a potentially complex system design and permitting process; and
- No responsibility for operation and maintenance (i.e., no need for additional staff training or a separate system service contract)

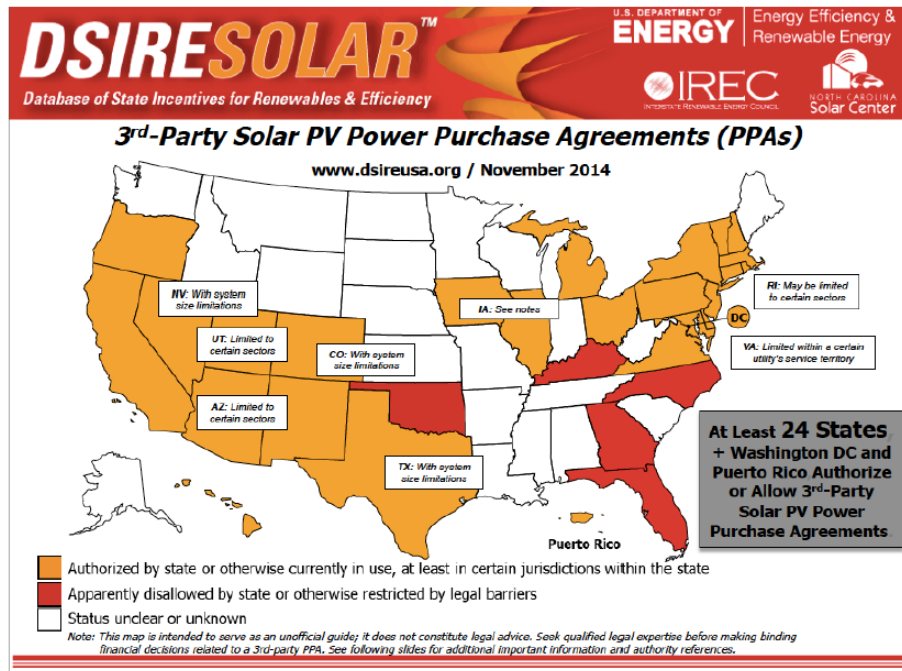
While this Toolkit focuses on PPAs specifically as opposed to other financing options, it is worth noting that a PPA is not necessarily the most advisable option under all circumstances. Indeed, there are many projects that have gone forward under different financial arrangements, either because a different financing option was more attractive with respect to local goals, or because other circumstances conspired to make the model unviable or otherwise unavailable. With respect to the question of availability, the primary constraint has historically been state regulations governing the sale of electric power to the consumers or the public, which prevent or restrict non-utility providers from offering such a service. While the precise nature of these restrictions or lack thereof is beyond the scope of this Toolkit and often requires a detailed legal analysis, it is worth noting that at present, retail solar PPAs are clearly permitted or otherwise in use in 22 states plus the

¹ We use the term *retail* here to identify arrangements where the project owner sells electricity to a host customer in a manner that directly reduces the customer’s purchases of grid electricity to meet on-site needs. This Toolkit does not discuss *wholesale* PPAs, where an entity (typically a utility) purchases electricity from a solar project for the purpose of reselling that electricity at retail to other customers.

² Retail solar PPAs are also used on the commercial and residential sectors, but for the purpose of this Toolkit we refer only to systems used by local governments. Furthermore, in some jurisdictions, laws allow a single facility to serve multiple separate loads not physically connected to the system. This is typically referred to as *virtual* or *aggregate* net metering.

District of Columbia and Puerto Rico. They are specifically prohibited or apparently disallowed in six states, while the status remains unknown for the remainder of states.

Figure 1: State Policy on Solar PPA Agreements



Click [here](#) to view state-specific references and citations

Beyond this consideration, readers should also note that other aspects of state and local laws might sometimes create obstacles to the model. For instance, other laws may place restrictions on the granting of site interests on locally owned property to developers, or limit the tenor and other terms of the PPA arrangement. [see also the [NREL PPA Checklist](#) & [Solar America Cities Webinar on Navigating Issues with Municipal PV Systems](#).]

3.2 Background on Site Right Agreements

The foundation of any solar energy project involving a PV system owner and an owner of real property is the real property site right agreement. The site right agreement (often referred to as a “site control” agreement) not only provides the PV system owner the legal rights it needs to access and use a particular property for the installation, development, and operation of a PV system, but also offers the first level of security and comfort for lenders and permitting authorities, who, by the PV system owner’s financial and legal investment into securing long-term site rights, are assured that the project is not speculative but has an actual, physical location secured by a written contract.

The type of site right agreement used—a license, easement, or lease—is usually the first matter negotiated because the right or interest sought to be granted (or given) may be dictated or guided by legal restraints or investor desires. Other factors include the type of system installed (photovoltaic (“PV”) or concentrated solar power (“CSP”), for example), location (for example, a “green” site or a former landfill), the type of installation

(rooftop or ground-mount), and the type of landowner or host (commercial, residential, municipal, or non-profit). These restraints and desires sometimes create an immediate tension between the owner of property and the PV system owner. This tension—which, for the property owner, may be between its desire to benefit from renewable energy produced on-site and its desire to minimize encumbrances on its title to the property—is not unique to municipalities or other public entities entering into long-term power contracts involving public real property. Each party has an interest to protect and to further, and recognizing the necessity and value of each party’s interest is the first step to preparing and executing a site control agreement that serves each party’s needs.

As an initial matter, state or local laws may dictate what type of real property rights a municipality may grant. Applicable laws may prevent a municipality from granting leasehold interests in public property without a public notice and bidding process, or a statute may require a public bidding process if the proposed lease will be greater than a certain period of time (e.g., five or ten years). Applicable laws may also dictate certain terms, such as the duration, rights of early termination, insurance requirements, and so forth. As part of the initial investigation and determination of the overall transaction structure, a municipality should consult with its counsel to determine what restrictions, if any, may apply to the type of site control agreement the municipality can offer to a successful bidder.

Concurrent uses and allocation of liability will also factor into determining the appropriate site right agreement. For example, in the context of a solar carport located in a parking lot used by the general public, the parties may negotiate a site license, in which the system owner has the right to use the space but assumes minimal or no liability for trespass or vandalism. If the carport is installed over a secure parking lot used only by government employees, the risk allocation may shift. Alternatively, in connection with a solar installation on a capped municipal landfill, the government may shift all liability and responsibility to the system owner, who takes an exclusive lease of the land with rights to limit entry and fence the site. On the other hand, rooftop PV system installations on community centers or schools may be well served by easements, which offer secure use rights to improvements that are also occupied and used by other parties. Each type of site right agreement is explained and compared below in narrative form, and summarized in the following Table 1.

3.2.1 Site Licenses

A license is a personal privilege to use the land of another for a specific purpose, and is revocable at the will of the landowner. As a personal privilege, unless the parties expressly state otherwise, a license is considered personal to the grantee (in this case, the PV system owner) and is not assignable to another party. Given the temporal uncertainty and insecurity of a license, the law does not require a license to be in writing; that is, the license can be given orally and still be valid and effective. Although a license is by definition revocable, it can become irrevocable if the licensee expends substantial money and labor in reasonable reliance on the representation (express or implied) of the landowner that the licensee would have an irrevocable interest.

In the PPA context, a license grants the PV system owner the right to use the site for the installation, construction, operation, repair, and removal of the PV system. However, the traditionally non-assignable, revocable nature of a license may be too uncertain for some PV system owners and their investor parties who are making substantial commitments to a long-term energy services agreement. If the underlying site right agreement can be terminated at any time, the 20-30 year term of a PPA offers little comfort to those counting on the tax benefits of ownership and long-term revenues from the sale of electricity. On the other hand, there also may be instances in which a system owner desires a site license over an easement or lease, such as in a

solar carport context where the general public uses the underlying parking lot. In such situations, the system owner may seek to minimize its exposure to liability for vandalism and trespass and its responsibility for monitoring and securing the overall site. A site license, which gives the system owner the right to use the property with minimal responsibility, may be the solution.

If a system owner is wary of a site license because of its traditional nature as a limited, revocable use right, some parties resolve this concern by structuring a license to “look” more like a lease or easement—by making it “irrevocable,” providing greater cure periods in the event of a party’s default, or providing greater periods for any notice of termination. This is often done in the municipal context where a lease may not be appropriate or may be restricted by governing law, but the parties agree that the protections of a lease or easement are desirable. In addition, the PPA itself may provide such substantial lender protections, default and cure periods, substitute site requirements, and termination fee provisions, such that lenders may accept the risks of a license because they can rely on the protections of the PPA. In fact, many of the projects surveyed for this Toolkit utilized site license agreements structured with enhanced protections for system owners and/or accompanying provisions in the PPA to mitigate owner risks. [for further details, see Section 5 [Annotated Model Documents](#).]

However, even with these modifications, or strong PPA terms, a site license may not be acceptable for lenders or system owners with low risk tolerance. Ultimately, some lenders and system owners will expect incontrovertible site rights for at least the first seven to ten years of the PPA to ensure the tax credit benefits are received by the system owner. These parties will often require more site-right security in the form of an easement or lease.

3.2.2 Site Easements

An easement is a *non-possessory* interest in land. This characteristic is one of the principal distinctions between an easement and a lease, which, as discussed below, provides a possessory interest in an item/parcel of property. An easement is a greater right than a license even though both are non-possessory and for limited purposes. While a license is a use privilege granted to another personally, an easement is an interest in the land itself, and the easement holder has a right to use the land or take something from the land, and to protect its interest from interference by others. This interest, once created, may be irrevocable, and generally is not subject to the landowner's will. As an interest in the land itself, an easement must be in writing if it is for any term greater than one year. From the perspective of the PV system owner, an easement provides written record of its interest in the land or property itself for a specific, known term, and for a specific, known purpose.

The critical terms of a solar project easement agreement include, among other provisions:

- A specific term of 20-30 years;
- A right to install fixtures and equipment comprising the complete system;
- A clear scope of use rights, including access, construction laydown rights, utility rights (that is, the right connect the system to telecommunication and electrical facilities); and
- The concurrent uses by the landowner and other parties, to minimize conflicting uses.

In easements and any other site right agreement, very clear consideration should be given to allocating obligations of security, solar access, roof or parking lot maintenance (including any costs associated with system shut-downs), vandalism, and damage caused by the parties or their guests or employees. These

considerations should be specifically negotiated based on the type of structure on which the PV system will be installed, the accessibility of the system, and any concurrent uses with the premises or the installation space itself (for example, in the case of a solar carport on a parking garage or lot).

In the context of a PPA, an easement is usually granted as a “commercial easement in gross,” which means that it is freely assignable. On the other hand, personal easements in gross are not assignable and transfer or conveyance of the underlying “burdened” property may extinguish the easement. However, so long as an easement is structured as a commercial easement in gross with the expressly stated intention that the easement runs with the land and will burden and benefit the parties’ successors and assigns, conveyance of either party’s interest will not extinguish the easement. An easement cannot be revoked (although it can be abandoned and terminated) and it can be pledged as security for financing, making it palatable to system owner financing parties.

3.2.3 *Site Leases*

A leasehold is a *possessory interest* in the land owned by another person. That possessory interest is commonly, but not always, exclusive—that is, allowing the lessee to exclude others and to dictate how the property is used. Even where a lease is not exclusive, a lessee may have the right to limit how the property is used and what type of concurrent interests may be granted. In the distributed generation solar context, leases are usually coterminous with the PPA, and not greater than 25 or 30 years.

A site lease will typically give the system owner exclusive possession of the property (allowing the system owner to exclude others) along with rights necessary to exercise its leasehold interest, such as access, construction laydown, vehicle parking, and the right to grant sub-rights as may be needed for utility interconnection, telecommunication improvements, or other uses. In turn, by granting a system owner exclusive possession of the property, the site owner usually transfers to the system owner the duty to pay taxes, insure the property, prevent trespass, and secure the property. It will also typically give a lessee the right to grant subleases, co-leases, easements, licenses, and many other rights commonly given by the landowner, though no more than the lessee itself has.

3.2.4 *Easements vs. Leases*

The characteristics of the project and underlying laws governing the disposition of local government-owned property often determine which option is most preferable and viable. An easement may be designed to have all of the protections of a lease—by providing standard default-and-cure periods, dispute resolution provisions, assignment/transfer rights mirroring those in the energy service or PPA agreement, and lender protections aligned with those in the PPA. An easement holder can also grant to others the rights it possesses, though in contrast to a lease, this is confined to a limited interest in the land or premises for the very specific purpose of operating a PV system.

A lease agreement is the most common and desired site right agreement for system owners negotiating with non-governmental entities or persons when the proposed installation is a ground-mounted PV system, because it gives the system owner the right to possess and use the property without disturbance by the landowner or others. However, in the rooftop solar context, site leases sometimes lead to confusion or complexities in allocating risk, security obligations, and repair and maintenance duties. These potential obstacles are not insurmountable, but where a rooftop installation is contemplated on a municipal structure, an easement may provide a simpler vehicle for delineating each party’s respective rights, duties, and obligations as they relate only to the rooftop portion of the premises.

Thus for rooftop solar projects, an easement may be a mutually acceptable compromise for PV system owners and municipalities in negotiating site rights for two primary reasons. First, municipalities may not be as restricted by law in granting easements as they are in granting leasehold interests, so they may not need to put the site easement out for public bid or comply with other public property disposal laws that could impede a site lease agreement. Second, by not granting to the holder possession of the property, the municipality has more freedom to grant noncompeting rights to other persons or entities. This is especially applicable in the rooftop context where an easement may be most obviously restricted to the roof and specific portions of the premises necessary for the operation of the project, leaving the remaining parcel or building available for other uses and interests (e.g., a daycare or preschool, a restaurant, or a tutoring center).

3.2.5 Access to Sunlight

Irrespective of the type of site right granted, both the municipality and the system owner should consider and address sunlight access needed to operate the system. This may include obtaining solar easements from neighboring property owners (which must be in writing and recorded in the public record in accordance with applicable laws) and specifically prohibiting in the site right agreement any obstruction or impairment of solar insolation to the system. Counsel for both parties should consult state law for potential requirements in drafting solar easements. Many states that have expressly addressed solar easements require the granting instrument to describe the dimensions of the easement, the estimated amount of sunlight directed to the system, any permitted shading by vegetation and other plantings, and other matters. The contracting parties may include remedies for a breach of the easement (such as specific performance, which allows a court to order any interference to stop). Some states also include height or design considerations, or may focus on visibility, placement, orientation, or setbacks. Counsel for the municipality and the PV system owner should familiarize themselves with these requirements before drafting and negotiating the site right agreement.

Table 1: Site Right Agreement Characteristics

Characteristics	License	Easement	Lease
Type of Right	A use right, rather than an interest in real property.	A non-possessory interest in land, which gives the grantee the right to use the land of another for a specific purpose.	A possessory interest in real property, typically allowing the lessee to exclude others.
Term	Typically fully revocable at will of granting party.	Not typically revocable at will, but may be subject to a term and to abandonment under statute or contract. In solar context, term is usually coterminous with the PPA.	Subject to statute or local law limitations, but otherwise at will of parties. Term is usually coterminous with the PPA.
Writing Requirements	None. May be oral. Not subject to statute of frauds, which requires interests in real property greater than one year in duration to be in writing.	Must be in writing, signed by both parties, and evidence of easement should be recorded to provide notice to third parties.	Must be in writing if greater than one year in duration. Written evidence of lease should be recorded to provide notice to third parties and create priority.
Financeable	Too uncertain to be financeable in some situations, but with additional protections built into the PPA, a license may be acceptable to lenders.	Typically, yes.	Yes.
Insurable	Not typically insurable under title insurance policy.	Typically, yes.	Yes.
Assignable	Traditional licenses are personal, and thus not assignable; however, the parties may agree to draft their contract otherwise.	Terms of easement agreement will control. Easements for rights to construct and operate system should be drafted as commercial easements in gross, to ensure right to assign and maintain in effect for term.	Terms of lease will control. Typically assignable by lessee unless otherwise stated.
Municipal Law Limitations	Usually none.	May be subject to term/duration limits.	May be subject to public bid/auction requirements or other limitations. Consult counsel.

If a solar energy system is proposed for a former landfill, vacant lot, or other ground-mount site, consideration should also be given to environmental conditions, water requirements and availability, and concurrent or potentially conflicting mineral rights. For general information on these and other issues, consult with counsel and see the following resources:

- NREL Public Sector PV Financing Report;
- MA DOER Solar Landfill Guidebook;
- TSF Solar Property Leasing Issue Brief; and
- NREL/EPA Landfill PV Best Practices Report

In addition, for example site lease documents specific to landfill projects, please see the following:

- Town of Lee, Massachusetts: Case Study; and
- Town of Cohasset, Massachusetts: Example RFP, Site Leases, and PPA Documents

3.3 Toolkit Contents

3.3.1 RFP Considerations and Variations

In contrast to several other components of this Toolkit, this section is intended to provide guidance on conducting solar RFPs, but not suggest or provide model language. This format was chosen for several reasons. First, local government solar RFPs vary a great deal owing to the circumstances surrounding a project, which often include a myriad of state and local laws governing the procurement of products and services by local governments. Consequently, it is not possible to craft a model RFP that could be readily customized according to the needs of a given project. Second, local governments are experienced in procuring products and services, if not necessarily solar PPAs, and will typically already have their own templates that can to some degree be customized for use in procuring solar. Finally, while a great deal can be learned by studying the outcomes of RFPs issued by other local governments, there is not necessarily a right way or a wrong way to go about designing an RFP for a solar PPA. Circling back to the first point, success is possible under many different arrangements, and the best design is heavily influenced by the characteristics of the project itself and the goals of the local government.

In recognition of these considerations, and because a fair body of useful resources and knowledge already exists, we have broken this section into two parts. The first portion is devoted to literature review that highlights the basic elements needed in a solar RFP, common pitfalls and lessons learned as profiled in existing resources. The second subsection elaborates on details, variations and design considerations that became apparent in our own review of local solar procurements, and which are not covered in these existing resources. Each individual element or consideration is supplemented with one or more examples of local jurisdictions where it was used.

In terms of coverage, our review included all of the local jurisdictions surveyed for the purpose of drafting the model PPA and site agreement documents, as well as several additional RFPs from other jurisdictions, and where available, a review of the Q&A and addenda published subsequent to the issuance of an RFP itself. Given the variations in state and local laws governing local government procurement practices, it is possible and even likely that some of the “options” described herein may not be permitted in some jurisdictions. Consequently, those elements identified as options should be read with the addendum “where not otherwise required or prohibited by state or local law”.

3.3.2 Model Annotated Solar PPA & Site Agreements

The model documents have been annotated using a combination of comment boxes and in-text links to sections providing alternative language and further resources. Some of the comment boxes are “stand-alone” in nature, indicating broad issues that a local jurisdiction may wish to consider. Others are supplemented by further discussions of important considerations, links to additional resources, and suggestions for alternative language that may be substituted for that contained in the model documents. In addition to the annotated versions, we have also provided “clean”, editable versions that do not include comments or in-text links for use as templates.

These model documents are designed for a single site, rather than an aggregated set of sites. However, some jurisdictions may prefer to execute a single “master” PPA encompassing multiple sites. Rather than design a wholly separate model document for aggregated sites, with equivalent annotations and alternate language, we have elected to use a more generalized approach to address this possibility. The various comments contain

discussions of some elements that should be considered for PPAs and site right documents where an agreement includes multiple sites.

3.3.3 Additional Resources

As noted previously, the intent of this Toolkit is to create a one-stop resource for local governments interested in pursuing retail solar PPA arrangements. Since the retail PPA model was initially developed circa 2006/2007, local governments and other parties have gained a significant amount of experience with its use, as well as with the process of procuring solar under other arrangements. As a result, a fair number of useful resources already exist in addition to those developed specifically for this Toolkit.

For the purpose of this Toolkit, the Additional Resources section functions as an expanded bibliography or list of references. It differs from a more standard reference format in that each resource heading contains a short summary description of the content. Beyond references to more general resources such as fact sheets and other published documents, it contains case studies of the individual jurisdictions studied in drafting the model documents described in the previous sections. These case studies describe the basics of the project(s) itself, such as the number of sites, how the RFP was structured, and available background on issues experienced during the procurement process and how they were remedied. As applicable, it also contains links to the associated documents, such as the RFP, RFP Addenda (where available) and the executed PPA.

4 RFP Considerations and Variations

At the outset, it is important to realize that there is no such thing as a broadly applicable “model” approach to designing a solar RFP. The variations used in successful RFPs are numerous, such that a successful procurement approach used by one local jurisdiction may differ dramatically from an equally successful approach used by another. That said, there is now substantial experience with conducting solar RFPs in many jurisdictions, and the knowledge that has been gained through those processes can be a valuable resource for other local governments. This experience can be generalized into a broad set of lessons learned, and it points to a fairly common set of elements that should occupy a place in any local solar RFP.

However, within this general framework there exists a substantial diversity of individualized elements that may be more or less appropriate depending on the circumstances of a given procurement. Our purpose here is to summarize the common elements and potential pitfalls, and provide users of this Toolkit with a suite of possible components that they may wish to consider as options within the general framework. It should be noted that in some RFPs, aspects of the eventual PPA and site right agreements are intertwined within the RFP requirements in such a way that portions of the RFP define certain elements of the ultimate agreements. Our intent in this section is to confine discussion to those aspects of an RFP that operate most exclusively within the domain of the RFP itself rather than the PPA and site right agreements. However, in some cases a certain amount of repetition is unavoidable due to the interconnected nature of the RFP and legal agreements.

4.1 General Guidance on Conducting a Solar RFP

At the highest level, a successful RFP could be defined as one where a local government is able to procure the products or services it desires in a manner that is efficient, fair, and which provides it with the best overall value in the context of the goals for the procurement. In this respect, a solar RFP is no different from any other variety of RFP. The question of how this is best accomplished does not have a formulaic answer. Instead, the best approach is simply the one that best addresses the needs of the local government, and the solar provider, in the context of a specific project. Stated another way, a well-designed RFP is one that gives respondents a “roadmap for success”, as ultimately realized by the execution of a contract and completion of a project that meets the aims of the local government.

While an RFP cannot necessarily be conducted according to a defined formula, in working towards this end, local governments should be aware of the lessons learned from other similar processes. There are several existing resources devoted to precisely this topic and the insights they collectively provide are valuable in any context. While we have separated these out into distinct sections, in reality each is a piece that influences other aspects of the larger whole. [see also the [TSF Solar RFP Issue Brief](#) & [Solar America Cities Webinar on Navigating Issues with Municipal PV Systems](#).]

4.1.1 *Defining Project Goals*

Successful solar RFPs do not just “happen”. In fact, a number of the successful RFPs profiled in this Toolkit were preceded by one or more prior attempts that were not successful. [see for example, the [City of San Jose](#),

California: Case Study.] As characterized above, the RFP can be seen as a road map for providers, and consequently it must define the destination and provide a means to get there.

In this analogy, the destination corresponds to the goals identified for the project. On the surface, this may seem blindingly obvious, but in practice not all local governments have precisely the same goals, and the goals should exert a powerful influence on how provider responses will be evaluated and the terms of a PPA. These goals can be seen as falling into one of two categories, which are essentially opposite sides of the same coin, as follows:

1. What the local government would like to achieve by entering into a PPA, such as reduced energy costs, meeting local sustainability goals, and providing educational opportunities (e.g., in particular for projects located at a school); and
2. What the local government wants to avoid when entering into a PPA, such as future energy price risk, enhanced liability and/or risk of harm, or development that runs counter to other goals (e.g., preserving trees or green spaces).

Depending on the set of priorities and any underlying legal limitations, the goals may be negotiable, or be considered “must haves”. For instance, a higher PPA price may be acceptable where it would allow for additional systems to be placed on less attractive sites. On the other hand, some terms may not be flexible, such as ensuring the integrity of the roof(s) on host sites for the duration of the agreement. Ultimately, both the negotiable and non-negotiable items must be clearly defined at the outset prior to the issuance of an RFP. Local governments should also take care in how they define any non-negotiable aspects, and recognize that unwillingness to negotiate some aspects (i.e., the general and specific sharing of risks) has the potential to derail a project. In particular, local governments should recognize that while providers are not inclined to one-sidedly take on risks that they cannot control or mitigate, in many cases they are open to compromise on how those risks are allocated.

The establishment of these goals is best accomplished through consultation with numerous stakeholders. These stakeholders will typically include local government staff from the facilities, legal, environmental or sustainability, procurement and permitting departments, but may include other internal staff or external stakeholders (e.g., community members). The desired outcome from this consultation is a common understanding of what the procurement priorities should be, the limitations that exist, and what is achievable within these limitations. Once broad goals have been established, further details of the RFP, including the “must haves”, proposal evaluation criteria/weighting, and the metrics to be used in the evaluation can be settled upon. Processes that lack effective stakeholder engagement in the initial stages may miss opportunities to address questions and issues up-front, and result in a project encountering roadblocks and delays in later stages.

4.1.2 Planning and Designing the RFP

Beyond the establishment of goals are the questions of how those goals should be reflected in the RFP, what other advance work is necessary to ensure a viable RFP, and how the RFP process itself will be managed. There are several essential elements and considerations that are part of this process.

Use of Outside Consultants

One of the first decisions that must be made in this respect is whether the internal local expertise and resources exist for conducting and managing the RFP. Many local governments have used the services of

consultants in preparing one or more components of an RFP (e.g., preliminary site assessments, legal considerations), and others have gone further by engaging an external party to act as an *issuer's agent* to conduct the procurement on behalf of the host. Whether hiring an outside consultant is necessary is a matter of local preference. It may be most advisable where a local government does not have prior experience with procuring solar, or is simply uncomfortable with relying wholly on internal staff for what can be a complicated and time-consuming process. [see for example the [Town of Lee, Massachusetts: Case Study](#), where an issuer's agent was used, and the [Town of Glastonbury, Connecticut: Case Study](#), where the town hired a consultant for RFP design and evaluation.]

Preliminary Site Assessments

The advance work needed to issue a solar RFP typically starts with a preliminary characterization of potential sites. In order to make informed bids, or even decide whether or not to submit a bid, providers need a starting point. Ideally, the information provided for individual sites should be as detailed as possible. A lack of detailed information will only give rise to questions from potential respondents, and could result in some providers electing not to participate in the first place. While local practices vary, the following elements are helpful in giving providers the information they need to make meaningful proposals:

- Basic site information such as address, building use (e.g., a school, local court office), utility provider, and desired application (e.g., roof-mount, ground-mount, or carport);
- Roof type and condition (if applicable), including roof age, existing warranties and surface area;
- Aerial photography with indicators for building orientation and meter location(s);
- Facility site plans, where possible including electrical drawings or any available structural analysis;³
- Facility energy use information, including annual or monthly energy use, peak load, and tariff/energy rate. In some cases an example bill may be a useful inclusion;
- Any known limiting factors, such as roof obstructions, potential shading concerns, or desire to maintain current elements of the site (e.g., no tree removal); and
- Where applicable, any advance work that has been performed in securing incentive or interconnection reservations prior to the issuance of the RFP.

Much of this information may be available internally and not require additional staff work beyond the time it takes to collect and assemble it. However, aspects such as potential shading concerns and other limiting factors typically require further analysis. This is one area where the use of an outside consultant experienced in performing solar site assessments is worth considering, especially where internal staff does not have solar experience. [see for example, the [Town of Glastonbury, Connecticut: Case Study](#) and the [Washington D.C.: Case Study](#), where preliminary solar site assessment information was distributed as part of the RFP.]

Ultimately, a preliminary solar site assessment serves the dual purposes of providing potential respondents and the local government with a representation of what is possible (i.e., the potential scale of the overall project) and giving respondents a clearer picture what they are responding to. There is little point in conducting an RFP for a site or sites that are not at least potentially suitable for PV installations. This is not to say that all sites must be equally suitable as “ideal” locations (they will not be), and some providers may rate the individual sites differently. In any case though, respondents need the information that is pertinent to making those judgments and devising their proposals.

³ Where there are security or other concerns about the public distribution of site plans or drawings, an issuer may provide this type of information in a more private manner (e.g., available upon a specific request, or distributed at a pre-proposal meeting).

Devising Evaluation Criteria and Metrics

The response evaluation criteria and weighting should to some degree be influenced by the goals set out for the project, though the basic elements of evaluation should include a set of reasonably common components, including provider experience, financial stability, and the ability to provide a complete and credible development plan in line with any technical specifications and “must haves” identified in the RFP. In some instances, state procurement laws may contain requirements or guidance that should be adhered to in the evaluation.

Where RFPs often differ is in the weight that they apply to these criteria, how each is measured, and whether or not the defined goals compel the inclusion of additional criteria. For instance, if the overarching goal is electricity cost reductions (which it often is), the evaluation will likely be heavily weighted towards provider pricing proposals. Likewise, if educational opportunities are considered a significant goal, respondents will need to be judged on their abilities and experience in this area. Given that the RFP should be designed as a roadmap for providers, the evaluating criteria and weighting should be detailed in the RFP, as it will influence if and how providers respond. [see the RFPs associated with the [Town of Lee, Massachusetts: Case Study](#) and the [Montgomery County, Maryland: Case Study](#) for examples of detailed evaluation criteria specified within an RFP.]

When considering proposal evaluation, the importance of the evaluation metrics cannot be emphasized enough. While it may be obvious that financial strength and provider experience should occupy a place in the proposal evaluation criteria, how these criteria should be measured can be less obvious. In order for the evaluation to provide a meaningful assessment of the merits of different proposals, thoughtful consideration must be given not only to the “what” but the “how”. Furthermore, the RFP must be designed in such way that responses provide the evaluators with the information they need to perform the review, compare, contrast, and ultimately score competing proposals.

Overall, the metrics and how they are reflected in the award of points, should consider how different elements add “value” to the proposal. For instance, is a provider with many similar projects more qualified than one who meets the minimum requirements, but is less “experienced” overall? Or, if respondents are permitted to bid on a subset of site locations, should a proposal that includes more sites at a higher cost/PPA rate be considered inferior or superior to another that includes fewer sites at a more attractive price? There are no standard answers to questions like these; the proper balancing will depend on local priorities.

Ensuring Comparability Among Bids

By necessity, provider responses to solar RFPs are lengthy and complicated. Yet each proposal must be evaluated fairly and completely, often under timelines that are influenced by exogenous factors (e.g., incentive availability). The need for a timely evaluation is challenging in itself, but is made even more so if the proposals themselves are each structured in unique manner, with bits and pieces of information scattered in different places in a way that made sense to one respondent, but is not consistent with the responses provided by others. Where this occurs, it may be difficult or impossible for the evaluator to make apples to apples comparisons, owing to differences in both what information has been provided, and how it has been provided. Stated another way, if the RFP does not expressly require and provide instructions for ensuring proposal uniformity, uniformity will not happen on its own.

This type of frustrating scenario is largely avoidable with sufficient forethought into the design of the RFP. The first step is ensuring that what is being requested from respondents is spelled out in (occasionally excruciating) detail. It is likely that questions will still arise and have to be addressed, but a premium should be placed on making sure that the RFP is internally consistent. For instance, if a model PPA is used, it may be confusing to respondents if a portion of the RFP indicate that substantive changes are impermissible, while another portion prompts respondents to suggest modifications to the PPA in their proposals. In this instance, both sections may be accurate (i.e., some minor modifications might be considered), but the way they are described could result in numerous questions, or proposals that are hard to compare to one another because they rest on different assumptions. In other words, similar to the element of uniformity in general, respondents can be relied upon to ask questions, but they cannot necessarily be relied upon to universally ask all of the right questions.⁴

Comparability can also be supported by the use of a broad template that provides a standard response format and structure (i.e., address this detail in this section), and individual templates or assumptions for certain elements. The use of a template can be particularly beneficial for aspects that can be readily represented in a quantitative way, such as annual PPA pricing, costs, and energy production estimates. In a similar vein, if an RFP will consider financing options other than a PPA, it will be necessary to establish a protocol and set of assumptions that support an evaluation of different models according to an appropriate point of comparison (e.g., net present value). Again, this will not just “happen”, it must be hard-wired into the RFP instructions. [see also the subsequent section, [PPA Only or Other Financing Options Permitted](#).] Finally, and as noted in the prior section, the evaluation and scoring system will influence how providers respond to the RFP. Providing prospective respondents with detailed evaluation criteria will help focus their responses on the areas that are considered particularly important to the evaluator.

4.1.3 Key Components of a Solar RFP

While crafting an RFP for a solar PPA project may be more art than science, the past experiences of public sector agencies in this area contain a number of fairly consistent components. Those elements listed below are not necessarily present in all RFPs, and often exhibit a fair amount of variation where they do, but each shows up frequently enough to be considered “typical”. Often, some of these components will be mirrored in the terms of an accompanying PPA. [for additional information see also the [TSF Solar RFP Issue Brief](#).]

Roof Integrity and Maintenance of Warranties

One of the primary principles in conducting a solar procurement should be to avoid any harm to the building or site. Often, the site is a relatively new roof (15 years of remaining life is a good rule of thumb) that is covered by an existing warranty. In the interest of “first do no harm”, respondents should be required to provide a written certification that the work they do will not violate any existing warranty, or be required to provide their own warranty. Requirements of this type are fairly universal, so any provider that cannot provide such an assurance should not be selected for the project. Further, the RFP should require the provider to verify that the roof will remain structurally sound under the added load created by the installation of the proposed system. This requirement is typically met with a certification from a professional engineer.

⁴ Many of the case studies in this Toolkit contain RFP Addenda that provide responses to vendor questions. We have incorporated a number of the commonly asked questions into the general guidance on RFP design, but users may wish to consult the various Addenda for the finer details of both common and unique vendor questions.

Provider Experience and Qualifications

Respondents should be required to submit information demonstrating their general competence to perform the work requested. The required qualifications should include the completion and financing of one or more projects of a similar scale and type (e.g., non-residential PPA projects of 100 kW or larger, ground-mount projects on a landfill), possession of required licenses and certifications, proof of insurance and bonding, and one or more references. Many RFPs also require respondents to list the individual project team members who will be working on the project, their respective experience, and whether and in what capacity the respondent will use subcontractors. If subcontractors will be used, the respondent should be required to demonstrate that the subcontractors also meet the minimum qualifications and possess all of the required licenses and certifications for the work they will perform. Depending on the circumstances of an individual project, the issuer may wish to specify additional criteria, such as experience working with the local utility or incentive programs, or designing educational programs.

In devising minimum qualifications, issuers should be aware that each additional minimum qualification narrows the base of potential respondents. In more developed solar markets where PPAs are already common, this should be less of an issue, but in less developed markets, highly restrictive experience and qualifications requirements may make it challenging to secure an adequate number of responses to the RFP, or make it difficult for smaller or local providers to participate. With respect to the specifics of experience, issuers commonly request documentation of three to five existing PPA projects of sizes that are comparable to the larger sites being considered in an RFP. For large RFPs in particular, issuers may also request that providers provide documentation of their ability to manage a large portfolio of projects (e.g., 1 MW of total PPA financed projects under current management). As discussed further below, establishing distinct project groups or tranches with different minimum experience requirements may be appropriate creating opportunities for smaller providers in large solicitations. [see [Provider Bidding Options: Site Selection](#).]

Financial Strength and Requirements

A PPA is a long-term arrangement, and though they should contain mechanisms that address the potential for financial failure of the provider, ideally, the selected provider should be financially secure enough to both build the project and operate it over the term of the PPA. Some RFPs state this requirement somewhat generally; leaving it to the respondent to submit information that they believe demonstrates their financial soundness. Others require several years of detailed financial statements that include a balance sheet, income, cash flows, SEC 10-K forms (if applicable), and tax forms. In order to ensure that respondents can be compared on even terms, more detailed financial information submittal requirements are preferable to less detailed ones. [see the RFP associated with the [Town of Lee, Massachusetts: Case Study](#) for an example of detailed financial strength requirements.]

Provider Responsibilities and Cost Responsibilities

Almost all solar RFPs require the provider to secure all of the interconnection arrangements and necessary permits, as well as provide a bid that incorporates these anticipated costs. Often, the RFP and accompanying PPA will take this further, expressly stating that the provider will be responsible for additional costs such as property taxes, removing the system at the end of the agreement (if it is not purchased by the issuer), or making arrangements and bearing the costs of temporarily removing the system if roof repairs are necessary. The ultimate intent of provisions of this type is to ensure that the local government will not be subject to any additional costs, and that all respondents price their offers using the same assumptions (i.e., the bids are comparable). Most RFPs are somewhat inflexible in this respect, but those which encompass a large number of sites or involve large projects sometimes contain clauses that allow a pass-through of unforeseeable costs, or

allow individual projects to be removed from the scope (or substituted with another site) where subsequent investigation indicates problems that could not be reasonably anticipated at the time of the bid, such as costly interconnection upgrades. [see the [City of Cincinnati, Ohio: Case Study](#) for an example of a PPA that allows for project removal from the site list, and the RFP Addendum in the [Town of Cohasset, Massachusetts: Example RFP, Site Leases, and PPA Documents](#) resource describing permissible pass-through of unforeseen costs.] Apart from flexibility provisions of this type, any such issues may be resolved under clauses in the PPA that allow it to be terminated without penalty for a variety reasons prior to the facility achieving commercial operation.

Technical Specifications and Design Plans

This category can encompass two related but different components. The first component is the set of technical specifications that are required as part of the proposal. Some issuers confine themselves to specifying aspects such as minimum module warranties, monitoring capabilities, and the general incorporation by reference of compliance with building and electrical codes and interconnection standards. Others spell out code and interconnection requirements in great detail, and insert additional requirements such as minimizing roof penetrations, specifying grid connection locations, and additional design characteristics. It is generally advisable to avoid extremely prescriptive design requirements (e.g., requiring the use of a brand, size, or type of module or inverter), and instead allow providers to design a solution that meets the goals of a project. An overly prescriptive set of specifications may unintentionally contain unachievable restrictions and contribute to low response rates. Issuers take care to make sure any “must have” design characteristics that are included are attainable, or allow providers to propose alternatives. This is sometimes referred to as an “outcome-based” approach, where the outcome in question is a project that best meets the defined goals.

The second component is the conceptual plan and technical specifications that the provider must submit. This will typically include the details of the system design itself (size, orientation, inverter locations), the components being used, warranties, preliminary site plans and drawings, and a detailed plan for how the provider will accomplish the installation. The last should include the various milestones and dates associated with completing the project, such as additional design planning, closing financing, permitting, installation, interconnection, commissioning, and energizing the system.

4.2 Further RFP Design Considerations

As previously noted, RFPs for solar PPAs are highly variable, both due to the individualized nature of the projects themselves, issuer goals, and legal constraints that exist in state or local procurement laws. The variations discussed below represent design variations found in a review of completed and pending RFPs. They are focused on broad considerations for RFP design, rather than the finer details of what is or is not specified in the surveyed RFPs.

4.2.1 Single-Phase or Multi-Phase Process

A single phase RFP process uses a consolidated method of selecting a provider or providers for one or more individual projects on the basis of both the provider qualifications and the details of the project proposal (e.g., adequacy of plan, firm pricing). A multi-phase process typically involves the selection of a short-list of potential providers based on their respective qualifications in the first phase, followed by a second phase where the ultimate provider is selected from the short list based on more detailed proposals for one or more

individual projects.⁵ Some RFPs exist use something of a middle-ground approach, where the first phase involves a shortlisting of providers, but the second phase is confined to activities such as presentations, interviews, and checking of references, rather than the submission of additional substantive site-specific plans or pricing. [see for example the [Montgomery County, Maryland: Case Study](#).]

The benefit of a single phase approach is that it can likely be accomplished more quickly than a multi-phase approach, and allows all potential respondents to be fully evaluated on the exactly the same basis. This approach is most suited for RFPs that contain only a single or small number of sites, though it has been used successfully for larger procurements. Where a large number of sites are being considered, it may be somewhat burdensome to ask providers to submit detailed site proposals and firm pricing within the relatively short time frame (typically roughly one month) of most RFPs. [see the [City of Xenia, Ohio: Case Study](#) & [Boulder Valley School District, Colorado: Case Study](#) as examples of a single-phase process.]

Consequently, where an RFP seeks proposals for a large group of sites, a multi-phase approach may be more appropriate. While the first phase of a multi-phase procurement is typically focused on general provider qualifications, it is advisable to require respondents to submit detailed plans and possible pricing for a subset of representative sites during the first phase. This allows the technical competence of providers to be considered as part of their overall qualifications, and can help screen out respondents that are unlikely to submit attractive proposals for the full suite of projects. [see the [City of San Jose, California: Case Study](#) and the [Washington D.C.: Case Study](#) as examples of this type of RFP design.]

A multi-phase process may also be more appropriate where it is apparent that a considerable amount of negotiation may be needed in order to arrive at a mutually agreeable contract. For instance, if there are known site issues that defy easy resolution (e.g., questions about liability for a brownfield or landfill site) or an expectation that other PPA terms could be problematic for providers, it is likely preferable to negotiate with an individual qualified provider rather than attempt to resolve these issues within the RFP process itself. [see the [City of San Jose, California: Case Study](#).] Similarly, in a state where PPAs are not common and there is little sense of what conflicts may exist (i.e., limited or no successful examples to draw from), provider selection followed by negotiation may be a more productive way to arrive at a solution. Otherwise, issuers may receive responses seeking a variety of different terms that are difficult to directly compare to one another.

Under either approach, the evaluation criteria and weighting protocols must be carefully considered. In a single-phase approach, considerable thought must be given to how provider qualifications are weighted relative to the site proposal and price components. In a multi-phase approach, the issuer must consider whether or how scores from the first phase of the selection process carry over to the second phase. On one hand, carrying scores over ensures the most complete evaluation. On the other hand, all respondents that have passed to the second phase of the process are presumably highly competent, so it is debatable whether any differences in the first phase scores should play a further role in the selection process. [see [City of San Jose, California: Case Study](#) for an example of non-carryover, and the [Town of Lee, Massachusetts: Case Study](#) as example of carryover.]

⁵ With the exception of the City of Cincinnati, OH example, all of the local government projects surveyed for this Toolkit used an RFP process, though some RFPs were phased in nature. As an alternative, a local government might choose to first issue a separate Request for Qualifications (RFQ) to develop a short list of prospects, then elect whether or not to issue an RFP at a later date.

4.2.2 PPA Only or Other Financing Options Permitted

Prior to issuing an RFP, many local jurisdictions have already decided on the PPA model as the preferred approach for the reasons outlined in the Background section of this Toolkit. That said, the PPA model is certainly not the only model that has been employed in local solar procurements, and despite its place as the most attractive option for many projects, there is no reason that other financing options cannot or should not be considered. Indeed, where PPAs are prohibited or otherwise constrained, other avenues may be the only option. These other options may include direct ownership, lease-purchase arrangements, or the combination of a limited term site lease and purchase option. [for example, see the [Gaston County, NC: Case Study](#) & the [TSF Solar Property Leasing Issue Brief](#).]

The challenge a local government faces in allowing providers to propose alternate financing arrangements is essentially one of complexity. Quite simply, there are different considerations that the local government must take into account when pursuing for example, direct ownership versus a PPA. For instance, under a direct ownership model, the local government will likely need to more carefully consider the long-term operations and maintenance of the facility (i.e., a separate service contract or personnel training) and may place a higher priority on obtaining a satisfactory minimum performance guarantee. Given that the RFP must also define the acceptable terms and conditions for a PPA arrangement and a format for responses, out of necessity it will likely be more complex than one confined to a PPA.

Beyond the complexity of the RFP itself, the evaluation process will also be more complicated because it will be need to be designed in such a way that proposals for one model can be compared to those made under a different model. Each additional model under consideration introduces additional complications. The most significant aspect of this consideration is how the cost and savings for a \$/kWh-priced PPA offering should be compared to the same under a direct ownership option, and the assumptions that need to be utilized in the analysis. Other elements of the evaluation, such as provider qualifications, may need to be considered as well. For instance, should providers that propose multiple options receive higher scores than those that make only a single offer? Or should relative experience with one model or another be scored separately, and if so, should each receive equal weight?

Given the potential complications, we suggest the local governments interested in financing options beyond a PPA do so in a separate process prior to the issuance of an RFP. This might be done internally by local staff if the requisite expertise exists, or using the services of an outside consultant. Whatever the case may be, and whichever model is chosen, narrowing the scope of the RFP request will benefit both the issuer and potential providers. The issuer experience will be simplified, and potential respondents will be able to more intelligently decide if and how to respond to the request. Under circumstances where a PPA is not viable for one or more sites within a larger RFP (e.g., a specific type of property that cannot support a long-term contract), the issuer may wish to separate any such unique sites into a separate group with alternative bidding options, as described in the following sections on provider bidding options. [see the [City of San Jose, California: Case Study](#) and the [Washington D.C.: Case Study](#) as examples of this type of design.]

4.2.3 Provider Bidding Options: Site Selection

An RFP may require respondents to submit proposals for the full suite of potential sites or allow them to pick and choose sites from the complete list. Where providers are not required to bid on all sites, there are two common variations. Under the first variation, no limitations are placed on provider choices, and they may submit bids for as few or as many sites as they wish. Under the second variation, sites are grouped into

categories based on potential system size, site characteristics (e.g., landfill vs. building rooftop), or issuer interest (e.g., primary vs. secondary sites) and respondents are permitted to submit proposals for one or more categories, but must do so for all sites within a category. [see for example the [Town of Lee, Massachusetts: Case Study](#) (interest grouping), the [City of San Jose, California: Case Study](#) (size and site characteristic grouping).]

Requiring providers to bid on all sites is most appropriate where the issuer desires to achieve a certain scale with the RFP, the sites themselves are reasonably similar to one another, and each site is pre-screened for suitability. The first element hinges on local goals, specifically whether the issuer wishes to pursue maximum savings or solar potential, or whether a smaller scale of development is preferable if it results in a lower contract price. The second element is important to consider because different types of sites may demand different qualifications and experience (e.g., a landfill project vs. a school rooftop project). Forcing providers to bid for projects outside of their core areas of expertise (or compelling them not to bid at all) is counterproductive. The third element recognizes that respondents must put considerable work into submitting proposals, and are less likely to do so where that work is not likely to result in an attractive offer.

On the opposite end of the spectrum, granting too much leeway for respondents may result in “cherry-picking” of the best sites, reducing the overall scale of the project and resulting in lower overall development and savings. It may also result in wildly varying bids from different respondents, as each chooses to bid with a different strategy. The middle ground, based on grouping of projects into like categories, is suited to addressing both sets of concerns, though under the right circumstances it is not the only option.

Where all sites are similar, an alternative to grouping is to allow provider discretion with respect to site proposals, but base the pricing component of the evaluation process on the overall level of savings for the collective suite of sites. This approach incentivizes respondents to submit bids for the maximum number of sites (i.e., reduces cherry-picking), but also allows them to discard sites that they believe are wholly unattractive. [see for example the [Montgomery County, Maryland: Case Study](#).] However, grouping remains the preferable method where sites are significantly different in terms of site characteristics or uncertainty exists regarding their suitability. How sites are grouped is to some degree a matter of local preference, though at a minimum, each group should be collectively large enough to incite developer interest on its own (i.e., typically 200 kW or larger). Given that part of the purpose of grouping is to allow more providers to participate in the solicitation, provider qualification criteria should also be devised with the grouping in mind.

4.2.4 Provider Bidding Options: Pricing Proposals

An RFP may require providers to submit an all-in PPA price for all projects being considered or individual prices for each site. In some cases, if individual prices are requested, an issuer may also request that the respondent calculate an overall average price for the whole project. This is less of a pricing restriction than it is a reporting requirement, since it does not compel the provider to change the pricing structure itself, just report the information in additional form. Within this framework, and as described in the preceding section, individual sites may be grouped according to their characteristics, such that each group is addressed separately and has a corresponding “all-in” price.

Some issuers place further restrictions on pricing proposals. One such restriction is limiting the use of escalation factors or prescribing parameters for their use. Another potential variation is to request discounted pricing under certain conditions, such as if actual energy production exceeds expectations or the provider is

awarded a certain amount of capacity. [see for example the [Montgomery County, Maryland: Case Study](#) & [Monmouth County, New Jersey: Case Study](#).]

Generally speaking, we recommend that respondents be permitted to design their pricing strategy in whatever way they choose, without limitations. The issuer may wish to specifically note that respondents are permitted to submit multiple pricing options, such as scale discounts or group-based pricing, but introducing restrictions may preclude the submission of creative pricing plans that could ultimately benefit both parties. If the RFP requires the respondents to format and specify their pricing proposals in the same manner (as it should), the bids should be comparable to one another however they are arrived at. In other words, as long as the information is there, the bids can be evaluated on their merits or lack thereof. That said, care does need to be taken to make sure that the submissions are consistent, and that they reflect a common set of assumptions. This includes the discount rate in a net present value calculation, any assumed escalation in utility rates, and solar production modeling data.

One instance where pricing requirements or restrictions may be appropriate and beneficial is when the issuer wishes to compare a set of distinct, exclusive pricing options. For instance the issuer may wish to see separate pricing options for buyer ownership vs. seller ownership of Renewable Energy Credits (RECs), or desire to evaluate fixed price vs. escalating price proposals. Given that providers may not uniformly respond with separate proposals of this type unless they are expressly directed to do so, this type of requirement will likely be necessary in order to ensure that multiple, comparable bids are received. It is also unlikely that such a request will represent a significant burden to any potential respondent, so it should not adversely affect the response rate. [see the [Washington D.C.: Case Study](#) for an example of an RFP requesting separately priced proposals based on REC ownership, and the [Tucson Unified School District, Arizona: Case Study](#) for an example of project where the provider offered separate fixed vs. escalating priced options, though they were not required to do so.]

With respect to the question of whether to require site specific pricing or an overall single price, we likewise recommend that respondents be permitted to submit site-specific prices if they choose, as well as an overall average price. This allows the providers to create a proposal that they feel represents the best value for the issuer, and is suitable for addressing scenarios where one or more sites may be culled due to unfavorable characteristics, or are sufficiently different from one another that they demand special considerations. [see for example the [Boulder Valley School District, Colorado: Case Study](#).] At the same time, it does not compel a provider to perform additional work that may not have much value in the context of submitting an attractive proposal. In other words, let the respondents come up with the responses, but require them to report the response in an identical manner.

4.2.5 Use of a Model PPA

Some local procurements include a draft or model PPA as part of the RFP, though it is equally common for providers to be asked to submit their own model PPA as part of the response. [see the [City of Cincinnati, Ohio: Case Study](#) and the [City of Xenia, Ohio: Case Study](#) as examples of respondent provided model PPAs.] The inclusion of a model PPA, as well as site access documents, has considerable merits, though the decision to do so is ultimately a matter of preference. Using a model PPA has the advantage of establishing a common starting point of terms and conditions for all providers considering a response. Given that an issuer will almost certainly wish to include a number of “must haves” for the project, laying these out in a standard format may be preferable to having providers attempt to incorporate them into their own documents. If

amendments to the model are requested, it will be easier for the issuer to evaluate the impact or acceptability of any proposed revisions if they are reflected as changes from a reference baseline.

On the other hand, experienced providers will typically have form documents that they have used successfully for other projects and using the provider's model as a starting point could make the ultimate negotiation process easier. The primary disadvantage is that the individual provider documents are likely to differ in terms of structure, terminology, and overall language as they address the variety of potential issues involved. It may therefore be difficult to compare and analyze precisely how the differences in language impact the respective obligations of the parties involved. At the very least, such an analysis will likely be time consuming. For this reason, we suggest the use of model documents, such as the template contained in this Toolkit or other adequately vetted state specific models.

Where a local jurisdiction surveyed for this Toolkit included model agreements as part of the RFP, they typically also allowed respondents to propose revisions. However, the acceptability of specific changes was frequently somewhat ill defined, giving rise to questions from potential respondents on what could be changed, or what would be considered a "substantive" or "significant" change. While it may not be possible to wholly describe the scope of revisions that might be considered, there are ways that a local government could narrow the possibilities so as to avoid having to continually respond to requests that are clearly unacceptable. First, the issuer can list any non-negotiable elements or provisions explicitly within the RFP or as a comment within the PPA, and provide a justification or reason why a specific change would not be considered (e.g., state law requires a non-appropriations clause). Second, and correspondingly, the issuer could expressly indicate clauses and provisions that they expect may be unattractive to providers or that they are otherwise unsure of. If the issuer elects to do the latter, it is also appropriate to identify any parameters for proposed revisions. [see for example the [Washington D.C.: Case Study](#), where the RFP did not utilize a model PPA, but expressly indicated several non-negotiable PPA elements.]

Local jurisdictions have multiple options for selecting a Model PPA for use in an RFP. The PPA template provided as part of this Toolkit is one such option, but some states have developed their own model agreements. For instance, the Massachusetts DOER has developed a model energy service agreement for use in some types of procurements, while Arizona State University and the Connecticut Clean Energy Finance and Investment Authority (CCEFIA) have developed further model documents. Other jurisdictions have used agreements in nearby jurisdictions as a template, and revised them to suit their own unique needs. The advantage of these local and state-specific models is that they can be written in a more granular manner to account for the intricacies of applicable state laws. That said, the clean model template provided herein may also be suitable where an existing model is not available, or under circumstances where a local government would simply prefer something different. For further information on available models and their use, please see:

- The [Arizona State Sample PPA and Site Access Template](#);
- The [Town of Glastonbury, Connecticut: Case Study](#), which prescribed the use of a state-developed template, but for at least one project ultimately used a PPA structured very similarly to that used by the same provider in San Jose, California;
- The [City of San Jose, California: Case Study](#), which did not use a model PPA, but convened an RFI to address provider concerns and studied PPAs in other local jurisdictions;
- The [Boulder Valley School District, Colorado: Case Study](#), which used a template based on executed agreements in other local jurisdictions; and

- The [MA DOER Energy Management Services Resources Website](#)

Where a state-specific model or local example is desired and that state is not represented above or in the various case studies included in this Toolkit, executed documents are typically public record and can be obtained from another jurisdiction informally or through a public records request.

4.2.6 Consideration of Bonus Categories or Value-Added Services

To some, a solar PPA offer might be considered to be something of a commoditized product. After all, one electron is identical to any other in a physical sense. On the other hand, the provision of electric services is increasingly an area where a great deal of product variation exists, to the benefit of customers. Some prospective customers have a narrow interest in pursuing a PPA arrangement, long-term energy cost savings. There is certainly nothing wrong with that type of mindset. After all, energy cost savings are a primary component of what solar PPA providers are selling, and energy cost savings is a worthy goal in and of itself.

That said, the confined approach leaves out any number of other services that a local government might consider worthwhile, if only it realized it at the time of the RFP. Given the high profile of some public buildings, and the fact that many public sector solar projects involve school rooftops, incorporating educational, outreach, or other public engagement components is one of the more common additional services often requested as part of a solar procurement. In some cases, an educational element and education program experience are mandatory components, while in others they are optional, and in still others there are mandatory provisions and options for providers to offer additional services. [see for example the [Town of Cohasset, Massachusetts: Example RFP, Site Leases, and PPA Documents](#) & the [Boulder Valley School District, Colorado: Case Study](#).]

An RFP may also go beyond simple educational components, to requesting alternative proposals or designs for specific public sites, such as building integrated PV or an aesthetically pleasing design (e.g., at a museum,) a concurrent roof replacement, or battery back-up for one or more systems. Further, an RFP may extend the list of potential services into non-solar areas, such as LED lighting in parking lot canopies, the purchase of RECs on behalf of the local government (i.e., to “replace” those owned by the provider), or the installation of components to make a parking structure or canopy “electric vehicle ready”. The current provider landscape is such that some PPA providers are very much capable of offering these and other services within the general realm of “sustainable energy”.

One challenge with the addition of further services is that it creates the potential for disparities in bid content, and ultimately, lack of comparability. A simple remedy to this concern is to require that all value-added, premium, or bonus service offerings be reflected as separately priced options from the basic solar PPA pricing structure itself. This might be in the form of an added up front or overall cost, or an adder to the \$/kWh PPA price. Whatever the case may be, all respondents should be directed to make their submissions in the same format.

The addition of further services may also make the PPA somewhat more complicated, unless they are addressed as part of a separate agreement or paid for on an up-front basis. For services that will last the duration of the PPA and are to some degree connected to the operation of the PV system itself (e.g., REC replacement, battery storage) the most logical method is to incorporate any necessary provisions into the PPA. For “turnkey” components, it may make more sense to address them outside of the PPA structure. This removes the potentially attractive prospect of financing the service through the PPA, but may ultimately be a

more tenable option than seeking to align, and avoid any conflicts between, the numerous terms and conditions that may govern each distinct service. [for an example of the inclusion of value-added premium components, see the [Montgomery County, Maryland: Case Study](#).]

4.2.7 Provider Selection for Future Projects

Conducting an RFP for solar PPA services and negotiating a PPA can be a time consuming and complicated process. To the extent possible and permitted by law, most jurisdictions would prefer to go through the RFP experience infrequently. At the same time, the landscape and footprint of a local jurisdiction is always changing, as is solar PV technology itself, which may result in the appearance of new opportunities for solar development, or cast possibilities that were discarded in the past in a new light. This type of new or unrealized potential may be difficult to exploit where it appears on a piecemeal basis, or is otherwise insufficient to merit a new RFP and PPA negotiation process (i.e., scale considerations exist). Moreover, given the changeable nature of some solar incentives, whether scheduled or unscheduled, time may be a significant factor in the decision to pursue new projects.

These considerations suggest that it may be in the best interest of an issuer to avoid multiple RFPs, and instead retain a single provider to pursue new projects as they appear or become viable. On the other hand, even if the customer is happy with their existing provider, there always remains the possibility that a better service could be obtained from somewhere else. Moreover, the idea of preserving a competitive environment for the provision of services to the local government has intuitive appeal. Balancing these opposing considerations can be challenging, and local governments have taken a number of different approaches to addressing the conundrum.

Frequently, local jurisdictions pursuing installations on a large number of sites have adopted a phased approach to development using a single provider. A typical example of this would be a term agreement (e.g., for 3 years) that establishes timelines and milestones for different groups of sites and, allows new sites to be added as they appear, and requires the selected provider to promptly respond to proposal requests for newly selected sites (e.g., within 30 days). Where the timelines are not met for reasons other than the competence or efforts of the provider, or if a new suite of sites becomes available, the term might be extended once or twice in one-year increments. [see for example the [City of San Jose, California: Case Study](#), the [Montgomery County, Maryland: Case Study](#) and the [Tucson Unified School District, Arizona: Case Study](#).]

Another method that might be used is to select a short-list of qualified providers through the RFP/RFQ process, negotiate a common set of project documents, and then allow only these providers to compete in limited RFPs for individual projects. The service agreement may take a similar form to that described above, being time-limited in nature with extension options when appropriate. The single provider approach will likely be more suitable for small jurisdictions, where the total number and size of projects is correspondingly small. The multiple provider model is better suited towards larger jurisdictions, such as a major city with hundreds of buildings and many different agencies. By preserving some level of competition, a local government may ultimately receive more attractive offers, and avoid accusations of favoritism for a particular provider. [see for example the [City of Cincinnati, Ohio: Case Study](#).]

A somewhat similar set of considerations exists with respect to RFP scale as a whole. An otherwise capable and qualified small provider may simply not have the ability to scale up quickly enough to develop the size of project that might be requested by an RFP from a large local jurisdiction. The benefits of scale can be significant though, and cannot be ignored. This is a difficult question for an issuer that on one hand desires to

support smaller, and likely local businesses, while also desiring to achieve the benefits of scale associated with larger procurements. The Cincinnati example noted above provides one alternative, while project grouping coupled with the possible selection of multiple providers can provide another if the proposal evaluation includes special considerations for small or local vendors. One further strategy that might be employed is to require respondents to devise proposals that expressly incorporate the use of local businesses, perhaps in combination with other measures like project grouping. For example, the District of Columbia's 2014 RFP required respondents to provide a "mentoring" program for local, small businesses in the interest of generating local expertise and helping them establish relationships with larger providers capable of larger projects. [for further details, see the [Washington D.C.: Case Study](#).]

5 Annotated Model Documents

The following model documents contain notes as comments within the text. Some of the topics addressed by these comments are worthy of a more lengthy discussion and links to reference materials. Because lengthy explanations are cumbersome to incorporate as footnotes or comments, the more lengthy annotations use cross-references within the model document text. Clicking these cross-references will take users to a supplemental section at the end of each respective model document containing further elaboration on the issue and associated reference materials.

5.1 Annotated Model PPA

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

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

BY AND BETWEEN

[_____],

AS SYSTEM OWNER

AND

[_____],

AS HOST CUSTOMER

AS OF

_____, 20__

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EXHIBITS

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Exhibit A-1	Description and Depiction of the Site
Exhibit B	Description of the System
Exhibit C	Early Termination Fee
Exhibit D	Solar Electricity Price Schedule
Exhibit E	Electronic Funds Transfer Instructions
Exhibit F	Solar Energy Facility Site Lease Agreement ¹

Commented [1]: Additional exhibits may include: (a) customers and local facilities if one PPA governs multiple sites; (b) construction performance bonds or insurance specifications; (c) lists of subcontractors; (d) contact details for persons receiving notices in connection with multiple sites. See the endnote for examples.

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 [redacted] (the “**Effective Date**”), by and between [Seller], a [State] [corporation / limited liability company] (“**System Owner**”), and [redacted], 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**.”ⁱⁱ

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

Commented [2]: This template PPA is written as an agreement between a single system owner and single host customer. If sites are aggregated, so that there is a single governmental authority but multiple “customers,” adjustments should be made accordingly. See the endnote for further details and examples.

Commented [3]: Modify as necessary to identify the applicable site control/use agreement. Some laws may prohibit leases because of disposal and interest in public property requirements for public bidding. Framing the document as an easement may be an acceptable compromise. See also the annotated and clean site license, easement, and lease templates contained within this Toolkit.

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 a negotiated agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either 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.

“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.

“Environmental 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: (a) production, energy, or investment tax credits associated with the development, construction, ownership, or operation of the System, accelerated depreciation, and other financial incentives in the form of credits, reductions, or allowances associated with the System or the Green Attributes that may be applied to reduce any state or federal income taxation obligation, including Tax Benefits, (b) performance-based incentives under applicable state or federal law or utility programs, including without limitation any feed-in tariffs that are in effect or may come into effect in the future; and (c) all other rights, credits, rebates, benefits, and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the System or the Output or otherwise from the development, installation, or ownership of the System or the production, sale, purchase, consumption or use of the Output. Without limiting the foregoing, Environmental Financial Incentives includes (a) the right to apply for (and entitlement to receive) incentives under any demand-side management, distributed generation, or energy efficiency programs offered by a utility company, a third-party provider, or the state in which the System is located; (b) any incentive offered pursuant to a renewable energy program, or any other incentive programs offered by or in the state in which the System is located; and (c) the right to claim federal income tax credits under Sections 45 or 48 of the Internal Revenue Code, or any state tax law or income tax deductions, with respect to the System under the Internal Revenue Code or any state tax law. Environmental 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

Commented [4]: The PPAs reviewed for this Toolkit contained significant variations in the definition of Force Majeure Event. An extended discussion of the details of Force Majeure provisions is contained in the cross-referenced subsection link located below this paragraph.

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.

[Extended Discussion: “Force Majeure” Provisions]

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides, nitrogen oxides, carbon monoxide and other pollutants, (b) any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere and (c) the Reporting Rights to these avoided emissions. Green Attributes do not include Environmental 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.

“Meter” means standard revenue quality 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 all waivers, approvals, franchises, variances, permits, authorizations, licenses or orders of or from any 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.

Commented [5]: The right to claim Green Attributes may be determined prior to issuance of the RFP or RFQ, or may be subject to negotiation. If the Buyer/Host Customer takes title to Green Attributes, this may be reflected as an increased power price. A municipality may also seek to buy “replacement” RECs on the voluntary market to preserve its claim to generating renewable energy. Each municipality will need to research its local rules and precedents regarding whether it may do so.

“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 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”).

[Extended Discussion: Termination of a PPA]

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

Commented [6]: Contract tenor statutes may limit the term to 10 or 15 years. PPAs are typically 20 years in duration, with provisions for negotiated extensions. A variety of potential circumstances could result in the termination of a PPA prior to the agreed upon term, including force majeure, party default, and system buyout. For further details on how these intermingled provisions may fit together, see the extended discussion cross-referenced below.

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](#)ⁱⁱⁱ

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](#).

Commented [7]: If a single PPA is used for aggregated sites, the parties will need additional phases to address concurrent or staggered development and operation of project sites, and early partial- or full termination if installation is not completed. See the endnote for examples.

ARTICLE 4 CONNECTION AND DELIVERY POINT; PURCHASE AND SALE OF OUTPUT

Section 4.1 [Purchase and Sale of Output](#)^{iv}

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 Host Utility pursuant to Interconnection and Net Metering Agreements. 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](#).

Commented [8]: If a prepayment model is envisioned, municipalities and their counsel should research whether authority exists to pre-pay for electricity for serving a government purpose. See the endnote for further details.

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.

In no event shall Host Customer sell, or be deemed to have sold, Output to any Person, except that excess Output beyond Host Customer’s immediate needs may be delivered to a Host Utility pursuant to an 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 (other than taxes imposed on Host Customer after the date of this Agreement or with respect to any sales, use, excise, or similar tax imposed as a result of the sale of Electricity), 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. System Owner has the right to challenge the lawfulness of any tax or assessment associated with the construction, operation, or maintenance of the System Assets on the Premises imposed on System Owner, or that are attributable to Host Customer for which System Owner is required to pay (including the right to obtain an exemption from such tax or assessment), Host Customer agrees to cooperate with System Owner to enable System Owner to challenge the lawfulness of any such tax or assessment or to qualify for an exemption from any such tax or assessment. System Owner will notify Host Customer of any such challenge by System Owner, and further, shall periodically inform Host Customer of all developments in connection with such challenge, including copies of any pleadings or other documents comprising the docket of any such challenge. Notwithstanding this Section 4.6, to the extent that System Owner is required to collect or may collect from Host Customer any sales, use, excise, or similar tax imposed as a result of the sale of Electricity, or as a result of the System being purchased by Host Customer, Host Customer will promptly pay such amount to System Owner to be remitted to the tax authority unless

Host Customer provides System Owner with a completed exemption certificate stating the reason that it is not required to pay such taxes.

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) If applicable, System Owner shall have entered into contract(s) with Subcontractors for installation of the System.
- (c) Receipt by Host Customer of [IDENTIFY ANY OTHER DOCUMENTATION NEEDED BY CUSTOMER BEFORE COMMENCEMENT OF CONSTRUCTION].

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.

Commented [9]: This section contemplates a single commercial operation date for a single system and Premises. For an example of staggered or varied commencement dates for multiple sites, as well as other sample terms, see the endnote.

(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), each Party may terminate this Agreement without triggering the default provisions of this Agreement upon thirty (30) 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 time 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 county 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 arising by, under or through Host Customer. Host Customer shall indemnify System Owner against all losses, claims, costs and expenses (including attorneys' fees) incurred by System Owner in discharging and releasing any such lien, encumbrance, pledge, levy or attachment arising by, under or through Host Customer.

Section 7.2 System Owner Is Exclusive Owner of Environmental Financial Incentives [and Green Attributes].^{vi}

Host Customer agrees that System Owner is the exclusive owner of all Environmental Financial Incentives [and Green Attributes] attributable to the System. Host Customer hereby assigns its interest (if any) in all such credits, attributes and other financial incentives 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].

Commented [10]: As previously discussed, this is negotiable. Revisions to associated sections (e.g., Reporting Rights) will be necessary if the Host Customer is to retain ownership of Green Attributes. The endnote contains a link to possible alternative language granting ownership to the host customer.

Section 7.3 Ownership of Deposits.

System Owner shall retain all right and ownership to any deposit made by System Owner to reserve for the System, or ensure the System's participation in, any Environmental Financial Incentive, and Host Customer shall transfer, assign or pay to System Owner any amount of such deposit made by System Owner but refunded to Host Customer by the Host Utility or other such applicable agency or program.

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, 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. Delays in the issuance of any such invoice will not constitute any waiver of Host Customer’s obligation to pay, or System Owner’s right to collect, any payment by System Owner under any such invoice.

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. Late payments on any undisputed invoiced amounts will accrue interest at a rate of 1.5% per month (18% per annum), or the maximum rate allowed by law.

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 by not more than plus or minus 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 by not more than plus or minus 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

[Extended Discussion: PPA Production or Performance Guarantees]

Section 10.1 **Interruptions Are Expected.**

Host Customer acknowledges and understands that solar power is an intermittent resource and that the Output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of Output is guaranteed in amount or time of delivery. Host Customer further acknowledges that it must retain a primary source of power from Host Utility.

Section 10.2 **Obstructions.**

Commented [11]: Municipalities might consider adding a “System Performance” or “Guaranteed Energy Savings” provision to this Article 10. An extended discussion and examples of performance guarantees are contained in the cross-referenced link below.

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, ordinary wear and tear excepted, 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](#).

Commented [12]: Because outages may be a matter of hours rather than days, parties may elect use an hourly cap instead of calendar days.

Commented [13]: Parties may also negotiate to include lost SREC values in compensation to be paid for outages or loss, though the valuation of SRECs may be difficult in some circumstances. An extended discussion of this topic is contained in the cross-referenced link below.

[Extended Discussion: Solar Renewable Energy Certificates (SRECs)]

**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.^{vii}

Host Customer makes the following additional representations and warranties to System Owner:

Commented [14]: If a PPA is entered without public bidding process, include a representation/warranty that the contract is exempt from public bidding rules. See the endnote for additional information and access to example language on additional representations and warranties.

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.

Section 11.2.2 Ownership and Control over Premises. Host Customer owns the Premises [subject to [redacted] / [free and clear of all liens, deeds of trust, mortgages, or other encumbrances except those of record as of the Effective Date].

Commented [15]: Identify any deeds of trusts, mortgages, or other encumbrances here or in an exhibit.

Section 11.2.3 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, and, Host Customer has complied with all laws and regulations relating to bidding or procurement of the Output hereunder.

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, the purchase of the Output, and the maintenance of any Interconnection and Net Metering Agreements. Host Customer shall provide System Owner with reasonable assistance in, and shall bear all reasonable expenses associated with, obtaining and maintaining such Permits, approvals, and other authorizations. Where allowed by law, Host Customer shall designate System Owner as its agent in obtaining all Permits, approvals and additional authorizations. All Permits obtained shall be owned and controlled by System Owner. To the extent that any such Permits must be obtained or owned by Host Customer, Host Customer agrees that it will work cooperatively with System Owner in connection with satisfaction and compliance with such Permits.

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, other electric service provider 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 thirty (30) 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, or (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.

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 five (5) 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 misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within sixty (60) 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 sixty (60) 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 one hundred twenty (120) 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.^{viii} 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 Host Customer’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 Continued Operation of System. 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 may, in its sole discretion and without limiting any rights or remedies available to System Owner under this Agreement, continue the Site Lease Agreement in full force and effect and sell any and all Output from the System to the Host Utility or any other purchaser allowed under applicable law.

Commented [16]: The inclusion of an Early Termination Fee is a matter of the parties’ risk assessment and negotiations, thus not all PPAs included them. See the endnote for examples of early termination fees.

Commented [17]: Parties should consult with counsel to determine if applicable laws would allow the system owner to use public property for private use. Other laws may restrict or prohibit the sale of electricity to an off-site user. For further discussion of this possibility, and the various triggers and outcomes of termination of a PPA, please see the extended discussion cross referenced below.

[Extended Discussion: Termination of a PPA]

Section 13.5 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 13.6 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.

[Extended Discussion: “Force Majeure” Provisions]

[Extended Discussion: Solar Renewable Energy Certificates (SRECs)]

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,

Commented [18]: Some parties include system loss or damages as part of the Force Majeure provisions, and in one instance (the City of Cincinnati OH, PPA) contemplated forgone SREC production as part of the cost of system damage. As discussed in connection with the definition of “Force Majeure Event,” the parties may agree that an event of non-appropriation is a Force Majeure Event. See the cross-referenced extended discussions on Force Majeure and SRECs for further details.

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 or shall agree to obtain an Independent Appraisal pursuant to [Section 15.5](#) to determine the Purchase Price.

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 twenty (20) 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 obtained and Host Customer does not exercise its Purchase Option, then Host Customer shall be responsible for payment of the costs and expenses associated with obtaining the Independent Appraisal. If Host Customer exercises its Purchase Option, 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 Host Customer. Host Customer agrees to pay System Owner for the reasonable costs and expenses directly relating to the breach of any representation, warranty, or covenant of Host Customer hereunder. Host Customer further agrees to pay for the reasonable costs and expenses of any repairs to or loss of the System, to the extent resulting from negligence or intentional misconduct of Host Customer or any of its contractors, agents, tenants, employees, partners, affiliates or invitees, or the failure of Host Customer to reasonably protect the System from trespass or other unauthorized access as provided herein.

Section 16.1.2 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 Mutual General Indemnity.

Each Party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party and the directors, officers, shareholders, partners, agents and employees of such other Party, and the affiliates of the same (collectively, the "Indemnified Parties"), 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 Indemnifying Party, including, with respect to Host Customer as the Indemnifying Party, for any claim or liability resulting from any trespass or other access to the System not authorized in this Agreement, except to the extent caused by the Indemnified Parties or any one of them.

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 PLUS THE VALUE OF ALL ENVIRONMENTAL FINANCIAL INCENTIVES AND THE SALE OF GREEN ATTRIBUTES. OTHER THAN FOR LIQUIDATED DAMAGES OR 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 NON-PERFORMANCE 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^{ix}

Each Party 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 injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party shall name and endorse the other Party 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 and Host Customer's property insurance shall cover the Premises and Site upon which the System is located. System Owner's commercial general liability insurance policy shall also be endorsed to include coverage for products, completed operations, and independent contractors.

Commented [19]: A study published by Tufts University and the Cadmus Group, Inc., discusses the possible advantages of insuring the solar PV system through the municipality's insurance. See the endnote for further details.

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 17.2.3 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 17.2.4 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 17.2.5 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.

Section 17.3 Use of Insurance Proceeds.

Unless Host Customer and the System Owner agree otherwise, in the event of any loss or liability related to the System Assets, System Owner agrees to promptly restore the System Assets to the condition prior to such loss, and System Owner will use the proceeds received by or on behalf of Host Customer (Host Customer agreeing to make such proceeds available) or System Owner, in either case from any policy of insurance providing coverage for such loss to make all necessary repairs or replacements to the Projects and to promptly restore deliveries of Electricity to Host Customer.

**ARTICLE 18
SYSTEM RELOCATION; ASSIGNMENT**

Section 18.1 System Relocation.

Commented [20]: Insurance terms and requirements are heavily negotiated and determined by state or local government requirements for contractors or others doing business with the government. The insurance provisions in this section are truly "placeholders", and should be customized as necessary.

Commented [21]: A number of PPAs reviewed for this Toolkit contain variations on the language here governing obligations and responsibilities should relocation of the system become necessary (e.g., the host facility ceases to be used or is sold). If relocation is inadvisable or not possible, other options typically exist. See the cross-referenced extended discussion below for further details and examples.

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.

[Extended Discussion: Facility Relocation Provisions]

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 fee title to the Premises, 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 (6th) 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 laws of the state of _____.

Section 20.1.2 Jurisdiction. Subject to Section 20.1.4 below, the Parties hereby consent and submit to the personal jurisdiction of the [federal or] state court located in _____ [County], _____ [State].

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.

Commented [22]: Applicable law may prohibit a municipality from waiving a jury trial. In addition, dispute resolution provisions in general are often governed by laws requiring certain steps, such as mediation or arbitration. The dispute resolution provisions in this Model PPA are for example purposes only.

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 senior executive with authority to resolve the Dispute. If the senior executives 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 or pursuant to an action at law or in equity. 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 department:

[_____]
[_____]
[_____]
Title: [_____]

If to **HOST CUSTOMER:**

[_____]
[_____]
[_____]
Title: [_____]

With a copy to Host Customer's legal department:

[_____]
[_____]
[_____]
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.

[Extended Discussion: Change in Law Provisions]

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, nondisturbance 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.

Commented [23]: While not present in all projects surveyed for this Toolkit, a number of the PPAs reviewed contain clauses that require good-faith negotiations (and other remedies) in the event that changes in underlying laws deplete the value of the agreement to one or both parties. See the cross-referenced extended discussion for further details on Change in Law provisions.

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 (other than any Lender) 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.

Commented [24]: Specific sovereign immunity language will vary by jurisdiction. Consult with counsel on appropriate language for each agreement.

Section 20.17 Event of Non-Appropriation^{*} [TO BE INCLUDED, IF AT ALL, BASED ON MUNICIPAL STATUTORY REQUIREMENTS.]

Commented [25]: Some municipalities are restricted from entering into long-term contracts or must include provisions for non-appropriation events in such contracts. See the endnote for further details.

[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: _____

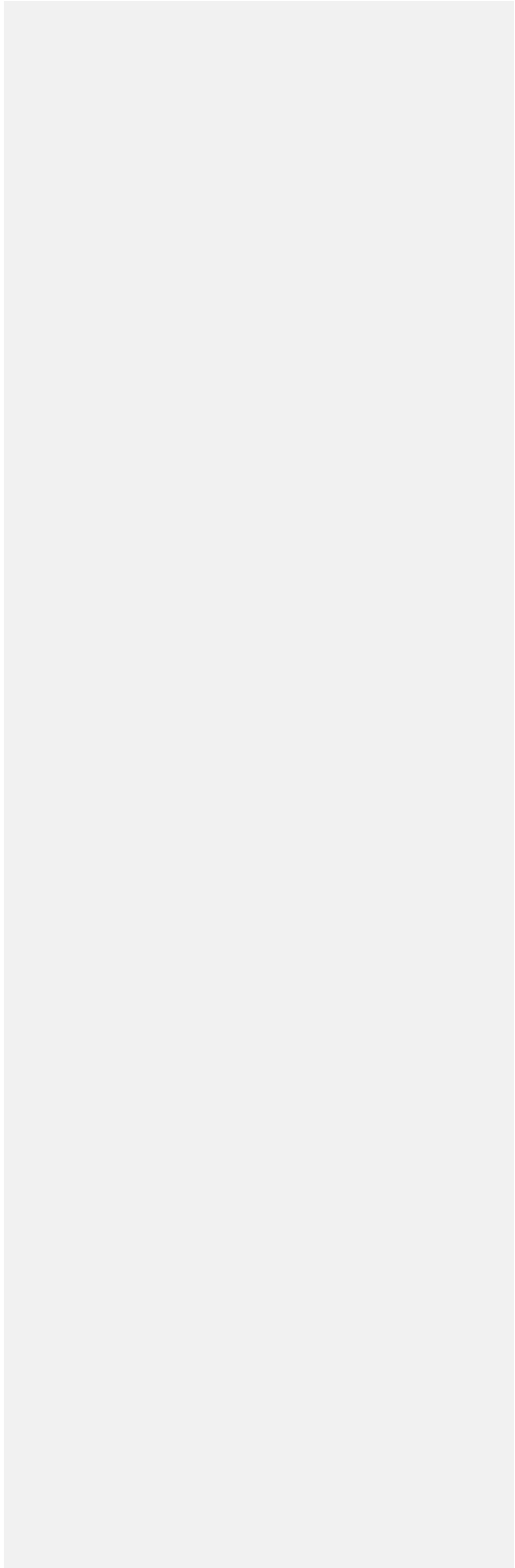


EXHIBIT A
Description of the Premises

[To be inserted.]

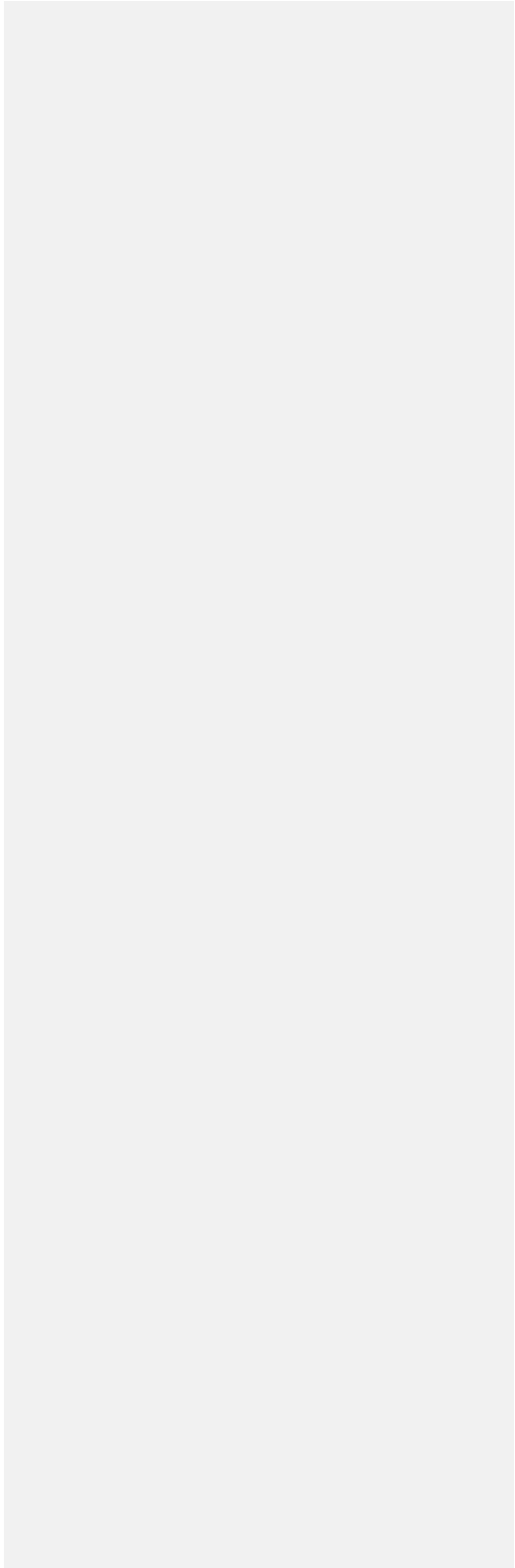


EXHIBIT A-1
Description and Depiction of the Site

[To be inserted.]

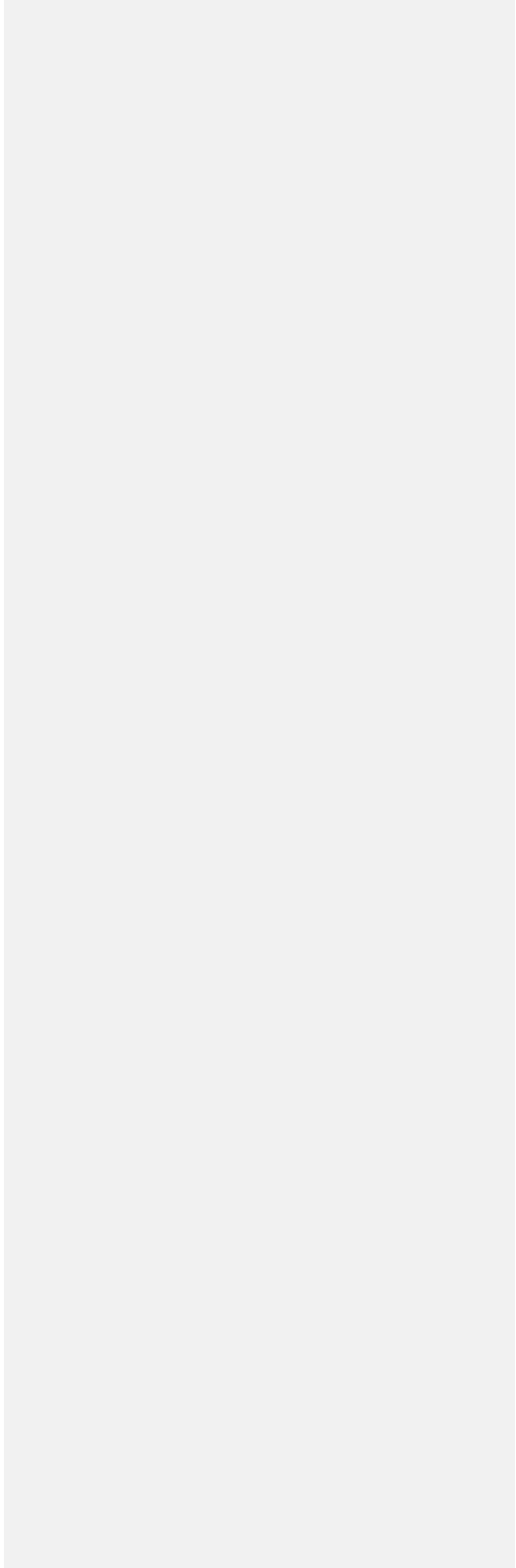


EXHIBIT B
Description of the System

[To be inserted.]

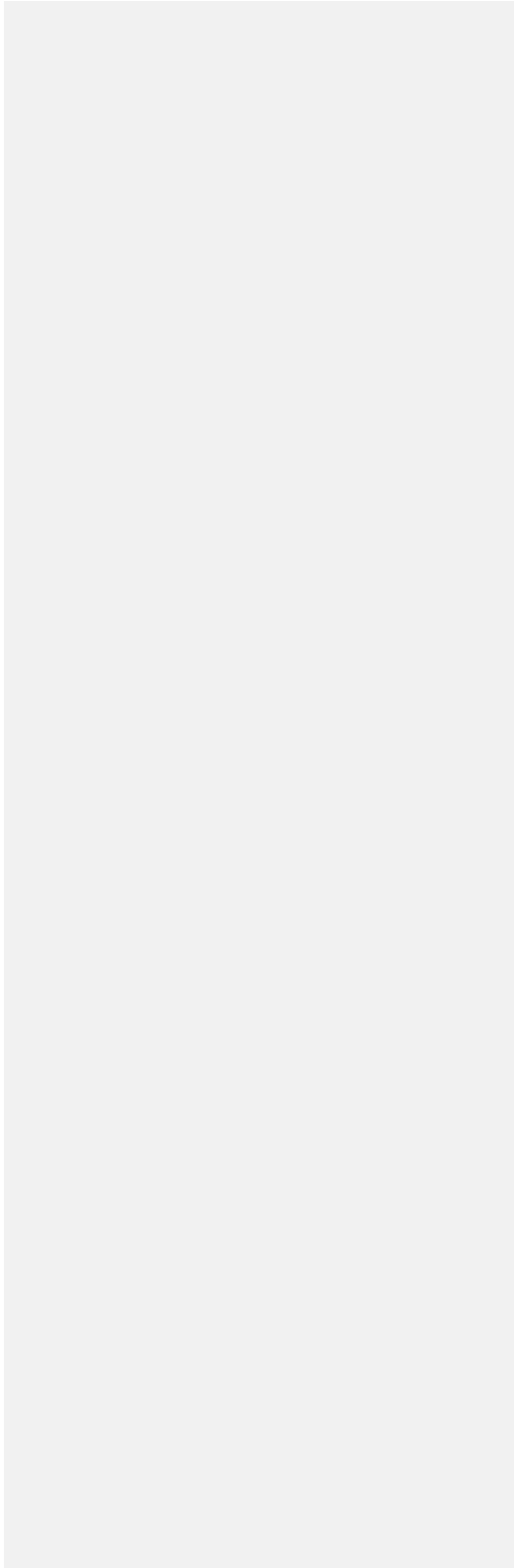


EXHIBIT C
Early Termination Fee

[To be inserted.]

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

Column 1

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	

Column 2

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)

6 th Anniversary	
7 th Anniversary	
8 th Anniversary	
9 th Anniversary	
10 th Anniversary	
11 th Anniversary	
12 th Anniversary	
13 th Anniversary	
14 th Anniversary	
15 th Anniversary	
16 th Anniversary	
17 th Anniversary	
18 th Anniversary	
19 th Anniversary	
20 th Anniversary	

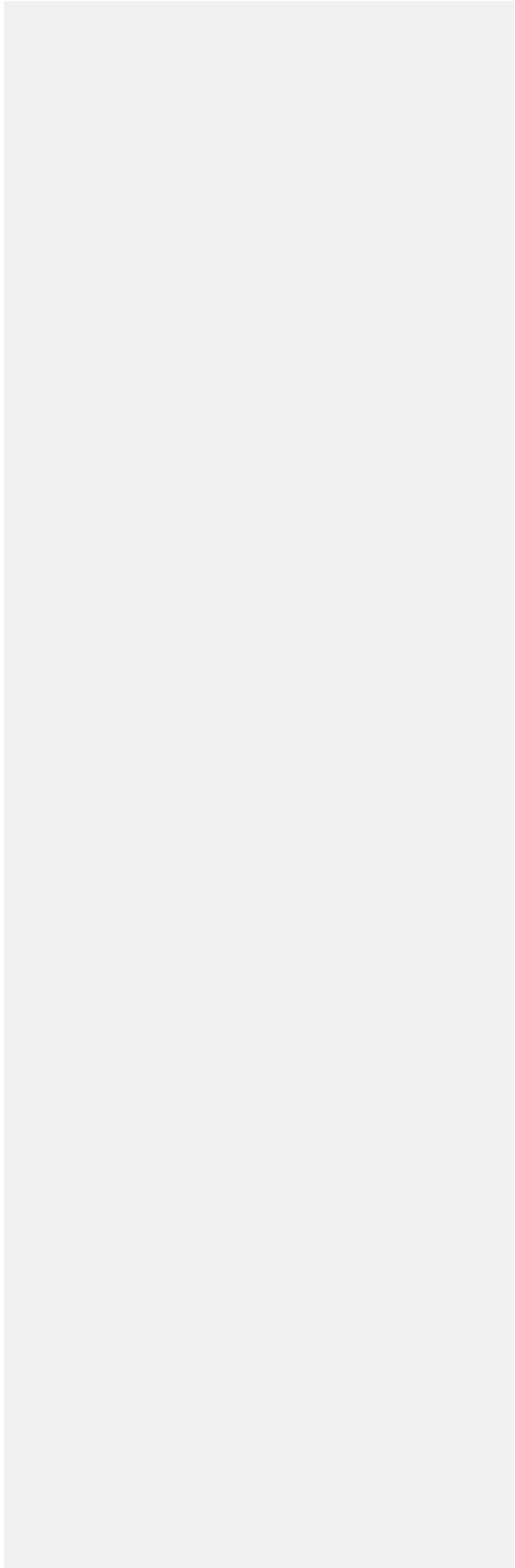


EXHIBIT D
Solar Electricity Price Schedule

[To be inserted.]

Commented [26]: The pricing schedule is inherently negotiable between the parties. The fixed price alternative indicated below will typically result in a higher initial price, and lower prices in out years than one with an escalation factor (annual or otherwise). Any number of other variations are possible to suit the needs of the parties involved in the transaction.

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)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

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.

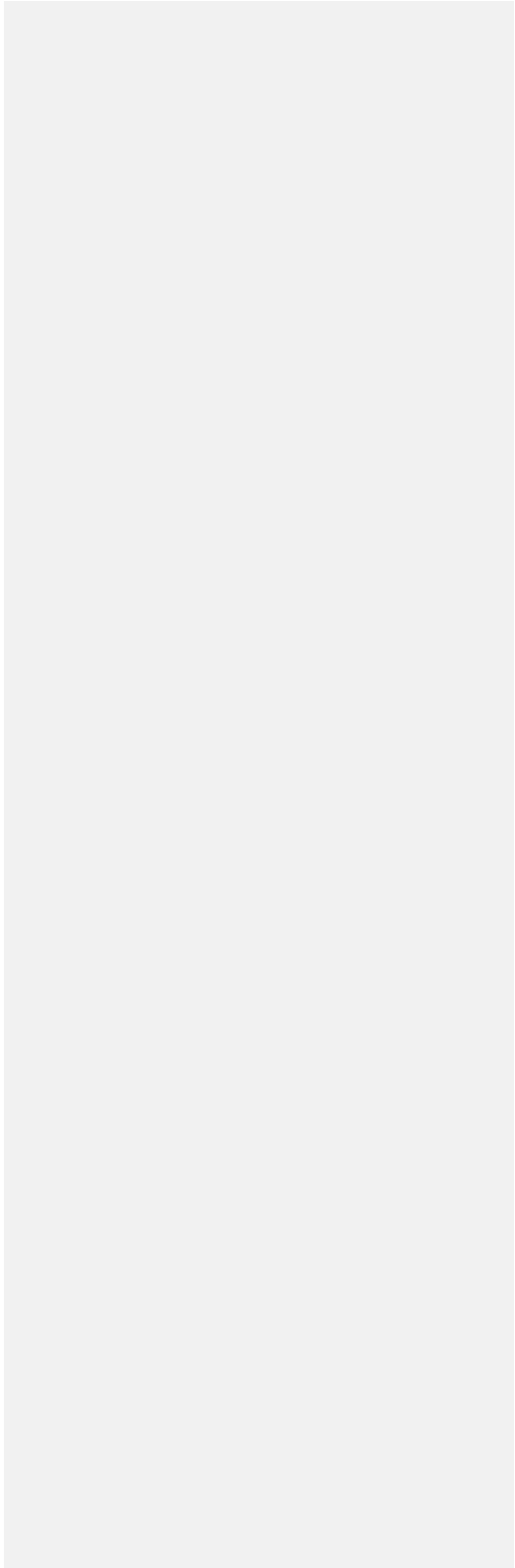


EXHIBIT E
Electric Funds Transfer Instructions

[To be inserted.]

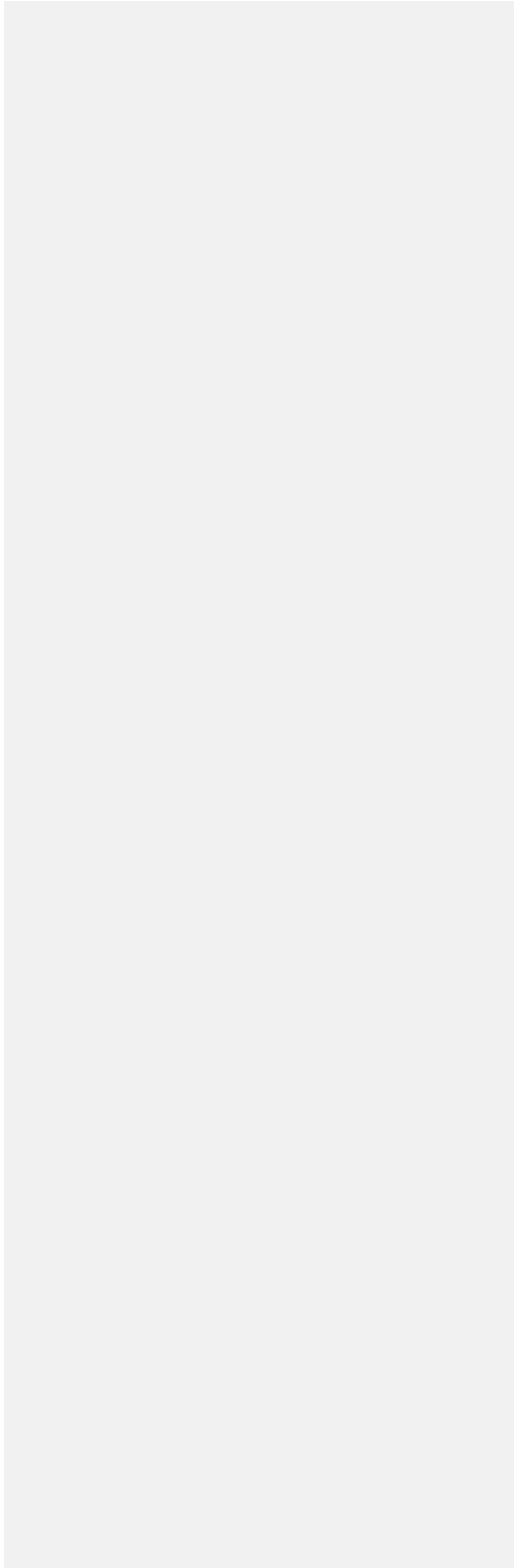
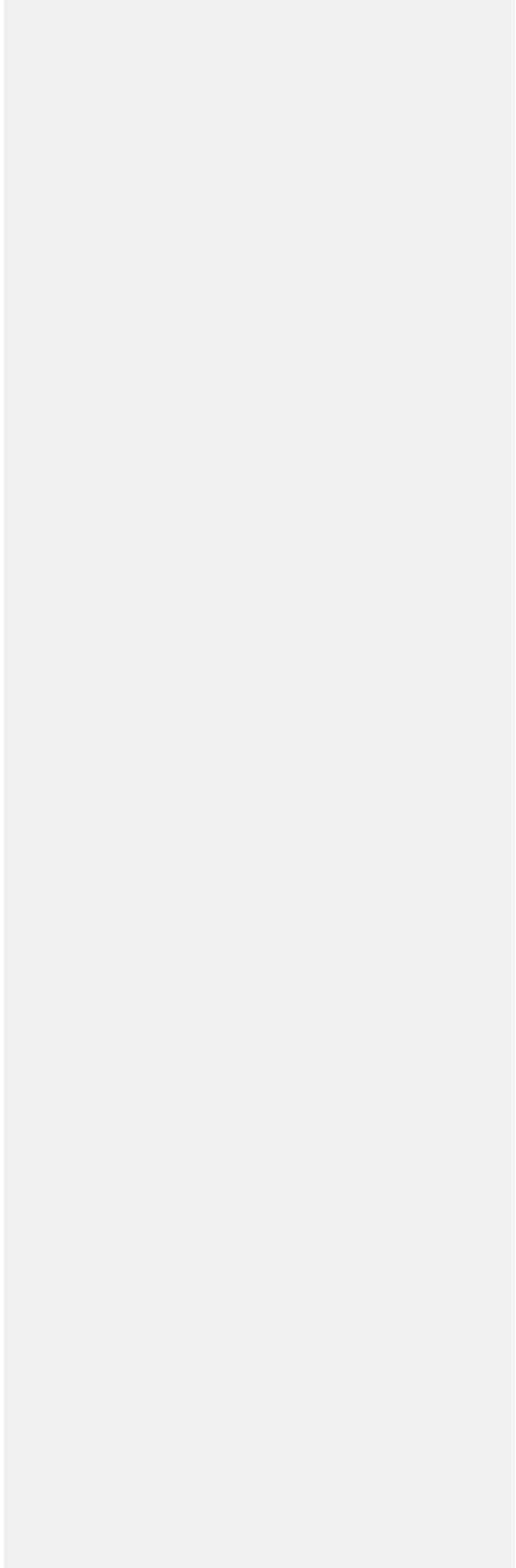


EXHIBIT F
Solar Energy Facility Site Lease Agreement

[To be inserted]



5.1.1 Extended Discussion: “Force Majeure” Provisions

A “Force Majeure” provision in an energy sale or PPA sets out each party’s respective rights and obligations in the event of an “Act of God” or event beyond the party’s reasonable control. Standard events of Force Majeure include wars and acts of terrorism; earthquakes, hurricanes and other natural disasters; labor strikes; embargos; and any other event or occurrence beyond the reasonable control of a party. Most often, upon the occurrence of a Force Majeure event, the contract will require the party claiming an impact from the event to notify the other party and begin steps to cure or address the event. Following written notice and upon beginning steps to address the impact, the “claiming party” is usually temporarily relieved of its obligations to perform under the contract. If the party claims that the event cannot be remedied and the contract cannot be fulfilled, the Force Majeure provision usually then allows that party to terminate the contract without penalty.

In the context of a distributed-generation PPA between a third-party System Owner and a municipal government, where power is delivered from an on-site solar generation system to a municipal host-customer, the parties also may be concerned with moratoriums on the activities contemplated by the contract, events of non-appropriation, and concurrent but conflicting uses. As a result, force majeure provisions in the PPAs we reviewed generally contained standard Force Majeure definitions as well as events that are unique to government contracting. Many PPAs we reviewed included, as events beyond the control of the parties, government moratoriums on any activity related to the PPA and budget non-appropriation events.

On the other hand, some PPAs addressed non-appropriation events separately and created alternatives for the parties to address events of non-appropriation, such as selling power to unrelated third parties or utilities, in the event of non-appropriation. In those PPAs, the definition of Force Majeure expressly excluded non-appropriation events. Whether an event of non-appropriation may be considered an event outside of the parties’ control will turn on whether the contracting party is also the budgeting or appropriating party. In circumstances where the customer may not have budgetary control, inclusion of non-appropriations may be appropriate. Similarly, where the definition of Force Majeure included government moratoriums or actions of other governmental authorities, these definitions often expressly stated whether those actions included changes in law and non-appropriation events.

For instance, the [City of San Jose, CA PPA \(Section 18.a\)](#) provides, in relevant part, that a Force Majeure event includes a “budget non-appropriation event” in which, for any year of the term, the governmental budgeting authority does not appropriate funds for the procurement of utility services. During such an event, if the customer does not otherwise have other funds available to make payments due under the PPA, the customer is not obligated to pay for (and the system owner is not required to deliver) electric energy until the budget non-appropriation event has terminated. If a budget non-appropriation event continues for more than 180 days, the system owner (but not customer) may terminate the Agreement. In general, we found it to be a good practice that when the parties have determined that certain events are specifically not Force Majeure Events, they state so expressly.

We also saw express *exclusions* for insured system losses, events of default by the parties, curtailment for any reason (other than a defined “force majeure event”), market conditions, and any act of negligence by the party claiming Force Majeure. Apart from the government moratorium inclusion in some PPAs, most PPAs were silent about whether changes in law affecting the power buyer (the municipality) would constitute a force majeure event. For example, if a net metering statute were repealed or amended in a manner that depletes the value of the purchase, it may make power off-take infeasible for a municipal government. Given that the ability to pay or take energy is usually excluded from the definition of a Force Majeure Event, this silence was

not wholly unsurprising. However, if the repeal of a net metering statute makes the actual utility connection itself unlawful, such an occurrence—irrespective of financial implications—may still fall within the Force Majeure provision.

In this instance, a local jurisdiction might rely on the Force Majeure clause for “events beyond the reasonable control of the claiming party”, but the express inclusion of statutory repeals may be worth considering. Lacking that, a PPA might require parties to pursue good faith renegotiations if such an event should occur. One PPA reviewed for this Toolkit, the Town of Norfolk, MA, contains a clause of this type. [for further details, see the [Extended Discussion: Change in Law Provisions](#).] In general, local governments should also make efforts to stay apprised of any potential changes and exert what influence they can to protect themselves from adverse impacts.

In sum, contracting parties may use the Force Majeure provisions of their PPA to address non-appropriation events, government moratoriums on activities contemplated by the PPA, and changes in law. While more general language could be used in this fashion, it may benefit both parties to have the boundaries of force majeure more clearly addressed with express language on inclusions and exclusions.

5.1.2 Extended Discussion: Termination of a PPA

Before a system is fully installed, connected to the utility meter, and operating, a PPA may be terminated for a variety of causes, such as convenience, failure to obtain necessary permits and approvals, or failure of a system owner to secure financing. These early termination rights are usually set out within specific timeframes, such as 30 or 60 days after the effective date of the PPA and may vary depending upon the parties’ anticipated lead time for securing equipment, conducting due diligence, signing an interconnection agreement, and so forth. When a PPA encompasses multiple sites owned by a single municipality, the parties typically ensure that early termination rights may be exercised in part, as to one or more sites, while leaving the PPA in effect as to remaining customer sites.

Once a system is operational, a PPA may be terminated under a variety of circumstances with different outcomes (or, “end states”) for the parties involved. In some cases, a single end state may be arrived at through multiple paths. However, in other cases, a given end state may only be reached through a single path, or by way of a limited number of paths. The intermingling of different paths to termination can be confusing, so in the interest of promoting a fuller understanding of the possibilities, the variety of different scenarios are laid out generally below.

NOTE TO USERS: These generalizations are not intended to represent the full level of variation that is possible. Individual PPAs have different ways of addressing the numerous issues that may require a resolution. The intent of this section is to assist readers in understanding how the different provisions fit together in a broad manner, and point out common elements and particularly noteworthy deviations, rather than address the finer details of how individual PPAs accomplish a specific end.

End State #1: Customer Purchase of the System at Fair Market Value (FMV)

At the end of the term of a PPA, including after any renewal after the initial term, the customer typically has the option to purchase the system from the system owner at its fair market value (“FMV”). The FMV may be determined by the parties themselves or by an independent appraisal. Some PPAs require an independent appraisal while others, such as the Model PPA Template, allow the third-party appraisal to be used as a

remedy where the parties cannot agree on the appropriate value. In the Model PPA Template and some other PPAs, the FMV is also used as the buyout price for a purchase of the system before the PPA expires. However, as discussed below, in some instances early buyout provisions compel the use of a different pricing determination.

An early buyout option cannot typically be exercised if the customer is in default. On the other hand, some PPAs expressly allow the customer to exercise the purchase option in an event of system owner default, while others allow the purchase option to be exercised at any time after the initial six or seven years of the PPA term. In still others, the purchase option provisions do not provide any right to exercise the purchase option before the expiration of the PPA term.

Electing Party: Customer

Possible Triggers:

- End of the PPA term
- Early buyout for convenience (possibly including a sale of the site to new owner)
- Early buyout in response to a permitted termination by the system owner
- Early buyout in response to system owner default

Typical Exclusions:

- Customer default

End State #2: Customer Purchase of the System at Other than FMV

Most PPAs allow the customer to exercise its purchase option at certain milestones during the term of the agreement. This is frequently referred to as a “buyout option,” but may also be referred to as one type of termination for convenience. In the Model PPA Template, the purchase price is determined solely by the fair market value (FMV) of the system. However, in some PPAs, it is stated as the greater of the FMV or a specified option price that is determined in advance and included as part of the agreement.

The “premium” over and above the remaining value of the contract, as represented by the option price, may be necessary to meet investor returns and account for the residual value of the system beyond the term of the agreement as well as take into account any recapture of tax benefits. In some cases, the option price resembles or is more or less equivalent to an Early Termination Fee. The customer’s purchase option usually cannot be exercised if the customer is in default of the agreement, but may be allowable under circumstances of system owner default as described in the previous section.

One PPA surveyed for this Toolkit (see [Section 9 of the Town of Glastonbury, CT PPA](#)) provides for an interesting and slightly different purchase option if the system owner elects to terminate the agreement due to a Change in Law. Under this circumstance, the customer may exercise its purchase option at the *lesser* rather than the *greater* of the buyout price and the FMV of the system. Customer purchase elections that take place at the end of the term of the PPA generally define the price exclusively as the FMV as opposed to any other value (i.e., there is no lesser or greater of pricing consideration). Consequently, this circumstance is not included below as a potential trigger.

Electing Party: Customer

Possible Triggers:

- Early buyout for convenience (possibly including the sale of the site to a new owner)
- Early buyout in response to a permitted termination by the system owner
- Early buyout in response to system owner default
- Early buyout in response to a Change in Law

Typical Exclusions:

- Customer default

End State #3: Removal of the System from the Site

Termination of the PPA resulting in the removal of the system from the site may arise from a myriad of different scenarios with different consequences to the parties involved. The simplest scenario stems from the end of the PPA term where the customer elects to have the system removed rather than purchase it. In this instance, the system owner typically bears the cost of removing the system and restoring the site to its prior condition. At the conclusion of the removal, neither party has any further liability or obligation to the other.

A slightly more complicated scenario arises if the termination stems from an uncured claim of Force Majeure by one party. Most often, an option to terminate the PPA due to Force Majeure may be exercised only by the non-claimant, though in some PPAs either party may elect to terminate regardless of who made the claim. Further, one PPA contains express language that allows only the system owner to terminate for a Force Majeure event stemming from the non-appropriation of funds, while allowing only the customer to terminate for issues affecting the system owner's performance (see [Section 18 the City of San Jose, CA PPA](#)).

Termination due to Force Majeure typically relieves both parties of further obligations to the other, including damages or termination fees.

A number of other situations also may give either party the ability to terminate the agreement. Foremost among these are events of default. Defaults most generally occur by the failure of one party to perform its obligations under the agreement, and this failure is not the result of a Force Majeure event. Remedies for default differ, though typically they permit the counterparty to terminate the PPA, require the costs of system removal to be borne by the defaulting party, and allow the non-defaulting party to recover additional direct damages from the defaulting party.

As discussed in the previous sections, some PPAs provide that in an event of system owner default, the customer may have the remedy of buying the system. Other remedies for the customer due to system owner default or other reasons may include expressly defined damages based on the forgone electricity cost savings for the remainder of the contract. Not all PPAs contain this type of remedy, but when it is provided, the cost savings are generally based on the net present value ("NPV") of "reasonably" expected excess costs for other electricity supply options above the PPA price. To this are added any costs associated with transitioning to another method of supply, and any system removal costs incurred by the customer. In the PPAs reviewed that contained a NPV remedy, discount rates for the NPV calculation varied from 3.0% to 9.5%, though the precise details of how excess costs or foregone benefits should be calculated were not provided in all instances. For examples, see the [City of San Jose, CA PPA \(Section 13\)](#) the [Town of Glastonbury, CT PPA \(Section 13\)](#), and the [Town of Lee, MA Recreation Site PPA](#) (Section 7 addressing system loss and foregone user benefits).

In the event of customer default, the customer typically bears the cost of system removal, and damages may be levied in the form of a specified, annually adjusted, Early Termination Fee included within the PPA. The Early Termination Fee is specifically calculated to include loss of or recapture of tax benefits, SREC values, loss of future revenue from the sale of electricity and SRECs, and system costs. These are then set out in the contract to ensure the seller's damages are enumerated and known by both parties in advance of any default. Although Early Termination Fees are the predominant system owner remedy for a customer default, some PPAs address the issue of damages more generally, forgoing the specification of an Early Termination Fee in favor of broad language reserving the rights for either party to pursue any other available remedies. This type of open risk may be unpalatable to municipal governments, making the careful negotiation of default remedies even more important.

A number of the PPAs surveyed for this Toolkit, provided additional post-operation termination rights, including allowing a system owner, (and in one instance, the customer) to terminate the agreement in response to certain changes in law, such as the availability of incentives. The protocols for termination and system removal under these circumstances vary, but most often the specter of damages payable to the other party was not present. Other clauses included termination language for loss of insulation, changes to on-site load, and non-appropriation of funds, though in some instances, these events fell expressly or implicitly within the definitions of Force Majeure or Default.

Electing Party: Either the System Owner or Customer Depending on the Circumstances

Possible Triggers:

- Customer election at the end of the PPA term
- System Owner election for early termination
- Customer election for early termination
- Early termination election of either party due to Force Majeure (neither party liable for damages)

End State #4: Continued Operation of the System After Termination

Some PPAs allow the system owner to continue operating the system on the same site, and sell electricity to another party—such as a utility, a nearby building, or a new occupant of the host site (and thus, a new customer)—following the early termination of the PPA.

Two PPAs reviewed for the development of this Toolkit (see [Section 6 of the Town of Norfolk, MA PPA](#) and [Section 4 of the Boulder Valley School District, CO PPA](#)) contain express clauses detailing remedies available to the system owner if funds are not appropriated to make PPA payments, or more generally if a customer defaults due to non-payment, that include this type of “third party power sale” as an alternative to terminating the PPA—rather than as a post-termination option for the system owner. In these instances, the system owner may sell power to another party during the period of non-appropriation or non-payment, *or* elect to terminate the agreement. These provisions allow outside sales during *a period of non-appropriation or payment* at the system owner's discretion and permits sales to the purchaser to resume at a future date (unless the owner ultimately elects to terminate the agreement), thereby creating more stability in a PPA with an entity that may be subject to annual budgeting uncertainties.

In the situation in which the PPA is terminated, but the system remains on-site and generates power for sale to a third party, the system owner might retain the right to seek damages based on the difference in revenue from its new sales compared to what would have been generated under the terms of the PPA (i.e., if the new

power purchase price is lower than that specified in the PPA). In other instances, the sale of power to another party may be considered a remedy in and of itself thereby eliminating or reducing the customer's risk of further obligation to pay damages. For example, the [Town of Cohasset, MA PPA \(Section 6\)](#) provides that changes to the state's net metering law may result in a no-fault termination of the PPA but allow the system owner to remain on-site and sell electricity to another purchaser.

Electing Party: System Owner

Possible Triggers:

- Permanent site closure
- Sale of site to a new owner
- Customer default (including a default triggered by a permanent site closure where a substitute site is not provided)
- Change in law (only clearly defined in one PPA, with an allowance for either party to elect termination)

5.1.3 Extended Discussion: PPA Production or Performance Guarantees

In private PV power sale contracts between a system owner and a commercial or residential customer, the goals of each party are usually straightforward: The customer seeks to reduce its energy costs, and the PV system owner hopes to take advantage of tax benefits, REC values, and power sale profits. In the government contracting realm, those goals may still be prominent, but they may also be joined by statutory mandates to improve energy efficiency and reduce energy costs through auditable contracts. To ensure a PPA is satisfying all of these potential mandates, some municipalities have negotiated Production or Performance Guarantees (e.g., the cited examples below in Massachusetts and New Jersey).

Provisions of this type may be stated in slightly different ways, but ultimately they will typically be based on a conservative estimate of how much energy a facility will produce in each year of the contract. This estimate will implicitly take into account the expected degradation of energy production from the system over time. Some PPAs state the guarantee in terms of a percentage of estimated production (e.g., 80%), while others begin with a guaranteed first-year kWh output (again, likely a conservative estimate) and allow it to be reduced over time, typically at a rate of 0.5-1% annually. Either method is suitable for arriving at a guaranteed production level that can be stated in terms of kWh of annual energy production. Where a guarantee is used, the system owner is most often required to reimburse the customer for any "lost savings", with exceptions for force majeure events or other losses in output that are permissible under the PPA (e.g., project downtime due to actions of the customer).

Even when not required by law, the inclusion of a minimum performance guarantee provides the municipality and its citizens with greater certainty that the investment the government has made in renewable energy has demonstrable results, and the system owner is accountable for those. That said, the necessity or desirability of performance guarantees should be considered with counsel before an RFP is issued and any such requirement should be specifically set out in any RFP. With respect to necessity, on one hand, the customer is still only required to pay for the actual amount of electricity delivered, so any loss of production is mitigated by the fact that payments to the system owner are also reduced. The system owner therefore has a strong incentive to maximize the energy production from the system, even absent the guaranteed production requirement. On the other hand, to the extent that the lost production requires additional purchases of

electricity from another source at a higher rate (i.e., the local utility or other supplier), the customer does experience an increase in energy costs. Even beyond the tangible complications that this may create for budgeting, given that one of the major reasons for entering into a PPA is energy cost certainty, this certainty could be considered to be part of the system owner service, meaning that a lower level of certainty represents a lower value service (i.e., compensation is warranted).

Ultimately, a system owner is not likely to take issue with providing a production guarantee as long as it is designed to be conservative; is reflective of reasonable allowable degradation rates; and does not subject it to penalties for circumstances that are beyond its control. Where compensation is provided to the customer for lost output, the system owner may also want these provisions to be mirrored to the extent possible by provisions that provide it with compensation for forgone purchases up to the guaranteed minimum production level. Similarly, provisions related to allowable project downtime should also be mutual, so that any period of non-operation requested by the customer does not count against the system owner's ability to meet the guaranteed production level. For examples of minimum performance guarantees stated in different ways, see:

- [Town of Lee, MA PPA \(Section 4.5 & Ex. D-1\)](#)
- [Town of Norfolk, MA PPA \(Section 2.7\)](#)
- [Arizona State Model PPA \(Section 4.1c\)](#)
- [City of Cincinnati, OH PPA \(Section 6\)](#)
- [Monmouth County, NJ PPA \(Section 9.4\)](#)

5.1.4 Extended Discussion: Solar Renewable Energy Certificates (SRECs)

SRECs typically are a significant component of the overall financial picture presented by a solar PPA project. Where the intent of the local government is to secure the lowest PPA price possible, the SRECs will almost always accrue to the system owner, functioning as an additional source of revenue that allows system owner to offer a more attractive energy price to the customer. Given this significance, and as previously discussed, the ownership of SRECs should be specified in any PPA.

It is also important that SRECs are addressed in any provision governing compensation due to the system owner as a result of lost production caused by the customer. Whereas the value of the forgone electricity production or sales may be determined by the contract price (or the difference between the contract price and any alternative sale that is made), the value of an SREC can be more difficult to determine. If the system owner has separate contract to sell SRECs to another entity, that SREC contract price should be used to determine the lost value from outages. Where such a contract does not exist, the value is often determined by the “market price” for SRECs at the time the outage occurred (e.g., in the [City of Cincinnati, OH PPA Section 6\(f\)](#) and [Monmouth County, NJ PPA Appendix H](#)).

This general “market price” terminology is used in several PPAs we reviewed for this Toolkit, though none contained a description of how that market price should be determined. Given the opacity of SREC markets, arriving at consensus value could be challenging, and unfortunately there is no perfect method for doing so. The best solution may simply be to discuss the issue with the system owner and come to a broad agreement on the source or sources that should be used to establish a market price, such as the market price for the previous twelve (12) months in the applicable state or regional REC marketplace, and any additional parameters that should exist. It may be that both parties will be confident that an agreement can be reached if

it is needed, and are therefore comfortable with the general “market price” language. Having said that, clarifying language may be desirable to one or both parties, so at the very least the issue deserves some consideration.

5.1.5 Extended Discussion: Facility Relocation Provisions

The needs of a local government, including the need for, or use of, a specific building or facility, may change over time (e.g., a school or government building may be closed or repurposed). While it is unlikely, and inadvisable, that a prospective PPA entrant would seek to enter an agreement for a site that is expected to experience such a change, predicting local needs 10 or 15 years in advance is likely to be difficult. Providers are sensitive to this potential, which represents a risk that their investment in the system could become “stranded” with a change in ownership, use, or closure.

The Model PPA template provided in this Toolkit addresses this concern with two provisions. The first allows the power customer to substitute a mutually agreeable replacement site for the facility, and holds the customer responsible for all relocation costs. It likewise provides that should the customer be unable to provide a replacement site, the customer is considered to be in default. In a default event, the customer is obligated to pay for the removal of the system and remit an early termination fee to the system owner, though where available, the system owner may exercise an option to retain the system on-site and sell electricity to another party. In the situation in which the power buyer sells or transfers its real property (that is, the PV system’s location), the PPA template provides several options:

- With the system owner’s consent, the customer may assign the agreement to a new owner of the premises after demonstrating that the assignee has the financial ability to meet the purchase obligations;
- The customer may elect to purchase the system if the conveyance takes place after the 6th anniversary of the commercial operation date; or
- The customer may terminate the PPA and pay an early termination fee

This general scenario is likewise laid out in some of the PPAs surveyed for this Toolkit, though several contain additional details related to the specifics of customer-borne costs, replacement site suitability (beyond simple mutual consent) and compensation due to the system owner if the replacement site has inferior insolation that results in lower revenue (i.e., a revised PPA rate that makes the system owner whole for foregone sales). While the PPA template is more general in these areas, the end result is the same; the system owner retains discretion to accept or not accept the substitute site. Further remedies, such as additional compensation due to the system owner, could be negotiated between the parties. Likewise, compensation for revenue lost during the relocation process could be addressed under provisions for impermissible outages, though in several PPAs the details are spelled out in an equivalent manner within the relocation clause.

- [San Jose, CA PPA \(Section 10\)](#)
- [City of Cincinnati, OH PPA \(Section 6\(d\)\(iii\)\)](#)
- [Tucson Unified School District, AZ PPA \(Section 12\)](#)

In some situations a site closure or other change that has a material adverse effect on the system owner might be considered a customer default and potential termination of the agreement, unless it can be resolved through negotiation, system relocation, buyout, or assignment of the PPA to a new power buyer. The same

end might be arrived at in the examples cited above. The difference is simply that express relocation clauses define a clear path for the customer to remedy the situation and avoid a default. With respect to assignment, a further variation was evident in one PPA reviewed for this Toolkit. The [Town of Lee, MA PPA \(Section 16\(e\)\)](#) generally requires system owner consent to an assignment of the agreement, but requires only a *notice to* (i.e., not consent from) the system owner if the new owner of the premises (a) will be eligible for net metering; (b) is expected to have the same or greater energy usage requirements; (c) has the same or a better credit rating than the initial purchaser; and (d) is willing to assume all of the PPA obligations in writing. This type of arrangement could be proposed as a supplement to the general consent requirements, though some system owners may be reluctant to grant this type of permission.

5.1.6 Extended Discussion: Change in Law Provisions

In each jurisdiction, solar PPAs are entered into under an existing set of laws and regulations that govern everything from who may contract to buy and sell electricity to how the electricity is net metered with the local utility. Given the 20-25 year standard term of many PPAs, it is not surprising that either party may be concerned that the underlying laws could change in a way that materially affects one party or the other. For instance, a change in law may introduce additional costs for the system owner or subject it to additional regulation, or it could reduce the value of the agreement from the perspective of the purchaser. The PPA may be written to provide remedies for such events.

Not all of the PPAs surveyed for this Toolkit address possible changes in law affecting the contract, and not all those that did do so in precisely the same way. Several PPAs define an actionable change in law and set out protocols for remedying the situation. For instance, the [Boulder Valley School District, CO PPA \(Section 3\(p\)\)](#); the [City of San Jose, CA PPA \(Section 9\)](#); the [Town of Glastonbury, CT \(Section 9\)](#) and the [Tucson Unified School District, AZ PPA \(Section 11\)](#) all contain explicit change in law clauses that allow for renegotiation of the contract if certain changes in law materially increase the costs of the system owner in performing its obligations. (Note: the first three are associated with the same system owner).

In those same PPAs, the contract requires the parties to pursue negotiations that preserve the economic value of the agreement to both parties. If an agreement cannot be reached, the system owner may terminate the agreement without any further liability. The Glastonbury, CT PPA differs slightly from the other two by expressly allowing the purchaser to exercise its purchase option at a more favorable price than would otherwise be the case (i.e., the lesser rather than the greater either the purchase option price or the fair market value of the system) if the system owner elects to terminate the agreement.

Similar provisions are found in these and several other PPAs. Those PPAs listed above also contain provisions that expressly allow for a restructuring of the agreement if it becomes likely that the system owner will be regulated as a public utility under the existing contract, and allow for termination if a mutually agreeable solution cannot be reached. Several others likewise confer the right, but not the obligation, for a system owner to terminate the agreement under the threat of regulation, or in instances where previously available incentives are eliminated, as in the [Town of Norfolk, MA PPA \(Section 9\(b\)\)](#). As with the other change in law provisions above, these clauses confer such rights to the system owner, but not the purchaser.

Only one PPA we reviewed, the [Town of Cohasset, MA PPA \(Section 6.1\)](#), contained a clearly identifiable mutual change in law clause. The Cohasset contract conditions the agreement's validity and effectiveness on the availability of net metering, or on a mutual decision to revise the agreement in the event that the facility

becomes ineligible for net metering. As remedies, either party may elect to terminate the agreement, or the system owner may continue to operate the facility and enter into power sale agreements with one or more other parties.

The virtue of express “change in law” provisions is that they may reduce, if not entirely remove, the possibility of dispute in circumstances where one party has been disadvantaged by an unforeseen event. In some PPAs, this type of event might be interpreted to fall within the definition of Force Majeure, but there are considerable variations in precisely how this term is defined so differing interpretations are possible. Moreover, either party may consider it preferable to have a well-defined protocol for addressing events of “economic hardship” that are less conducive to resolution through the Force Majeure curative procedures, even if the end result could be the same (i.e., termination without further liability for either party).

As contemplated by the Town of Cohasset, MA example referenced above, local governments specifically may wish to protect themselves against changes to net metering laws that reduce the value of their electricity purchase in recognition that the terms of net metering laws have become increasingly contentious in some states during recent years. While to a large degree the focus of these debates has been on the residential sector as opposed to the non-residential sector due to differences in utility rate design, it remains possible that non-residential net metering customers could also be affected by future changes as well. Ultimately, it is in the interest of both parties to exercise what influence they can to prevent adverse changes, but Change In Law provisions may provide some comfort should preventative efforts fail.

5.2 Annotated Model Site Easement Agreement

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

SOLAR ENERGY FACILITY SITE ACCESS AND USE EASEMENT AGREEMENT

(_____ Project)

This **SOLAR ENERGY FACILITY SITE ACCESS AND USE EASEMENT AGREEMENT** (this "**Agreement**") is made as of _____, 201_ (the "**Effective Date**") by and between _____, whose address is _____ ("**Grantor**"), and _____, a _____, whose address is _____. ("**Grantee**"). Grantee and Grantor are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Grantor is the owner of certain real property located at _____, _____ County, _____ (the "**State**"), together with certain improvements, buildings, and other structures consisting of [_____], as more particularly described on the attached **Exhibit A** and incorporated herein by this reference (the "**Premises**").

B. Grantee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for the delivery of electrical energy to be installed, maintained, operated, and used on the Premises.

C. Grantor and Grantee are parties to that certain Solar Energy Power Purchase and Sale Agreement dated of even date herewith (the "**Solar PPA**"), pursuant to which Grantee (as System Owner) has agreed to sell to Grantor (as Host Customer), and Grantor has agreed to purchase from Grantee, all of the electrical energy produced by a solar photovoltaic electric generation system (as further defined in the Solar PPA, the "**System**") to be installed and operated by Grantee on a portion of the Premises.

D. In furtherance of the Solar PPA, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement for purposes of (i) constructing, installing, owning, operating, maintaining, repairing, and removing the System on a portion of the Premises, (ii) transmitting electrical energy to, on, over, and across the Premises, and (iii) ingress to and egress from the Premises for the installation, operation, maintenance, repair, and removal of the System.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Grantor and Grantee hereby agree as follows:

AGREEMENT

1. Grant of Easement and Laydown Area License.

1.1 Access and Use Easement. Grantor hereby grants to Grantee a nonexclusive easement (the “Easement”) on, over, and across the Premises, including the roof of the Premises and other areas in and around the Premises identified and depicted on the attached Exhibit A-1 and incorporated herein by this reference (collectively, the “Site”) for solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to (a) locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on and from the Premises; (b) making such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises, in accordance with Grantee’s plans and design pre-approved by Grantor, as set forth in the Solar PPA; (c) temporary vehicle parking; (d) access (including but not limited to access for lifting, rigging, and material-handling equipment); and (e) ingress to and egress from the System on, over, and across the Site during the Term (as defined in Section 2) (collectively, “Operations”).

1.2 License for Temporary Construction Laydown Area. Grantor hereby grants to Grantee a license to use that portion of the Premises depicted on the attached Exhibit C and incorporated herein by this reference, for the assemblage of materials to construct, erect, and install the System (the “Laydown Area”). Upon completion of construction and installation of the System, Grantee will remove all materials and equipment from the Laydown Area and will restore the Laydown Area to substantially the same condition in which it existed immediately prior to Grantee’s use.

2. Term; Termination; Cross Default.

2.1 Term. The Easement and rights granted to Grantee hereunder commence on the Effective Date and shall continue for a period of _____ (____) years[, which term may be extended for up to two consecutive periods of five (5) years each], as described in the Solar PPA (collectively, the “Term”); *provided however*, Grantee’s right of access shall continue in full force and effect for a period of _____ (____) days following the expiration or earlier termination of this Agreement and the Solar PPA for purposes of removing the System (save and except for termination following Grantor’s exercise of its purchase option, as set forth in the Solar PPA).

2.2 Termination. [Without limiting the generality of Section 2.1, if construction of the System does not commence within one (1) year of the Effective Date, this Agreement shall terminate by its terms and shall be of no further force or effect, unless otherwise agreed in writing by the Parties.] Upon the expiration or earlier termination of the Solar PPA, Grantee shall surrender to Grantor all of Grantee’s right, title, and interest in and to the Premises by executing and recording in the real property records of _____ County, _____, an instrument evidencing the termination of this Agreement and the Easement.

2.3 No Cross Default. No event of default by Grantee, as System Owner, or Grantor, as Host Customer, pursuant to the Solar PPA shall constitute a default under this Agreement. Any amendment, modification, expiration, or termination of the Solar PPA shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties. Notwithstanding the foregoing or anything in this Agreement to the contrary, each of Grantor and Grantee has the right to terminate this Agreement if the Solar PPA terminates as a result of a default by either Party thereunder.

3. Design and Construction of System; Acknowledgment of Grantor.^{xi} Grantee shall install and construct the System in accordance with the Solar PPA. Grantor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, or to the ground or a combination thereof.

Commented [27]: Some parties may wish to address existing site conditions (e.g., concealed conditions) in the site right agreement as well as, or instead of, in the PPA. See the endnote for further details.

4. Maintenance of the Premises; Security.

4.1 Maintenance. During the Term, Grantee shall, at Grantee's sole cost and expense, maintain the System and the Site in accordance with all laws, rules, ordinances, orders, and regulations of all applicable local, state, and federal governmental authorities.

4.2 Clean Condition. Grantee shall not unreasonably clutter the Premises and shall collect and dispose of any and all of Grantee's refuse and trash.

4.3 Security.^{xii} Grantee shall provide all security measures that Grantee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations.

Commented [28]: Some site right agreements incorporate "system loss" provisions similar to those found in a PPA, contemplating circumstances where the system itself is destroyed. See the endnote for further details.

5. Grantor's Representations and Warranties.^{xiii}

5.1 Authority; No Third-Party Rights. Grantor represents and warrants to Grantee that there are no circumstances known to Grantor and no commitments to third parties that may damage, impair, or otherwise adversely affect Grantee's rights hereunder, the System, or the performance of the System by blocking sunlight to the System. Grantor and each person signing this Agreement on behalf of Grantor has the full and unrestricted right and authority to execute this Agreement and to grant to Grantee the Easement and other rights granted hereunder. When signed by Grantor, this Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms.

Commented [29]: A site right agreement may expressly address the property owner's right to reroof, which may be anticipated for one or more sites during the term of the PPA. See the endnote for further details.

5.2 No Interference.^{xiv} Grantor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight. Grantor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Grantee of its rights granted under this Agreement; (ii) take any action that will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Grantee's access to the Premises for the

Commented [30]: In a license or easement situation in which others may access and use the property, the parties may wish to incorporate terms such as this "No Interference" provision. See the endnote for further details.

purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Grantee's access to any portion of the System.

5.3 System Property of Grantee; Transfer of the Premises. Grantor acknowledges and agrees that Grantee is the exclusive owner and operator of the System, no portion or component of the System is a fixture, the System may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered with the conveyance of any fee or leasehold interest in or to any portion of the Premises (any such conveyance, a "**Transfer**"), and Grantee has the right to file in the central and county records in which the Premises is located financing statements evidencing Grantee's title to the System. Grantor shall notify Grantee in writing no fewer than fourteen (14) days before any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer. This Agreement and the Easement and rights granted herein shall survive any Transfer.

5.4 Title Review and Cooperation. Grantor shall cooperate with Grantee to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Grantor's fee title to the Premises to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Grantee under this Agreement. If Grantee and Grantor are unable to obtain such agreements from any third party holding an interest in the Premises, Grantee and any assignee of Grantee shall be entitled (but not obligated) to make payments in fulfillment of Grantor's obligations to such third party and may offset the amount of such payments from amounts due Grantor under this Agreement. Grantor shall also provide Grantee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Grantee.

6. Insurance. At all times during the term of this Agreement, Grantee and Grantor shall, at its own respective cost and expense, obtain and maintain in effect the insurance policies and limits set forth in the Solar PPA.

7. Liability; Indemnity.^{xv} The Parties' respective indemnification rights, duties, and obligations as set forth in the Solar PPA shall apply without limitation to this Agreement.

8. NO CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER GRANTEE NOR GRANTOR SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT. THE FOREGOING PROVISION SHALL NOT PROHIBIT GRANTEE OR GRANTOR FROM SEEKING AND OBTAINING GENERAL CONTRACT DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS AGREEMENT.

9. Hazardous Materials.

9.1 Grantor shall not violate, and shall indemnify Grantee for, from, and against, any claims, costs, damages, fees, or penalties arising from a violation (past, present, or future) by Grantor or Grantor's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or which

Commented [31]: The allocation of liability and indemnity may be heavily negotiated and dependent, in part, on the concurrent uses of the premises. Here it refers back to the PPA, though some jurisdictions specify it in the site right agreement as well. See the endnote for further details.

is regulated under current or future federal, State, or local laws or regulations (“**Hazardous Material**”) on or under the Premises.

9.2 Grantee shall not violate, and shall indemnify Grantor against, any claims, costs, damages, fees, or penalties arising from a violation by Grantee or Grantee’s agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

10. Assignment; Successors and Assigns; Agreement to Run With Premises. This Agreement and the Easement granted herein may be assigned by Grantee only in accordance with [Section ___ of] the Solar PPA. This Agreement and the Easement granted herein shall run with the Premises and survive any transfer or conveyance of the Premises. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties hereto. Grantee has the right to assign this Agreement, the Easement and other rights granted to Grantee hereunder to any assignee of Grantee under the Solar PPA.

11. Rights of Lenders. Grantee has the right to collaterally assign its rights and interests under this Agreement to any Lender (as defined in the Solar PPA) under the Solar PPA. The rights of any such Lender, as set out in the Solar PPA and including but not limited to, the right to notice and cure of any default by Grantee, shall apply without limitation to this Agreement and the Easement.

12. Notice and Notices.

12.1 Notice. Except as may be required by an emergency, following construction and installation of the System, Grantee will give Grantor reasonable written or telephonic notice before any entry onto the Premises by Grantee’s employees, agents, or contractors. In the event of Grantee’s entry due to an emergency, Grantee will promptly notify Grantor of its entry and the nature of the emergency.

12.2 Addresses for the Delivery of Notices. Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may also be sent by fax transmission [or email] provided that such transmission includes delivery confirmation [or read-receipt confirmation, as applicable]:

Notice to Grantor:

Facsimile No.: _____
Attn: _____
Tel. _____

Notice to Grantee:

Facsimile No.: _____
Attn: _____
Tel. _____

With a copy to:

With a copy to:

Facsimile No.: _____
Attn: _____
Tel. _____

Facsimile No.: _____
Attn: _____
Tel. _____

12.3 Change of Recipient or Address. Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual Person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

13. Miscellaneous^{xvi}

13.1 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 13.1.

13.2 No Partnership or Sale. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller of electrical energy, or any other association between Grantor and Grantee, other than the relationship of grantor and grantee.

13.3 Severability. If any court or regulatory agency of competent jurisdiction holds that any provision of this Agreement is unenforceable or invalid, then Grantor and Grantee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

13.4 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

13.5 Recordation. Grantee may, at its sole cost and expense, record this Agreement in the real property records of _____ County, _____.

13.6 Amendments. This Agreement may be amended only in writing signed by Grantee and Grantor, or their respective successors in interest.

13.7 Dispute Resolution. In the event of any dispute arising under this Agreement or the Easement, the dispute resolution provisions of the Solar PPA shall govern the resolution of any such dispute.

Commented [32]: Site right agreements signed in connection with PPAs usually involve only nominal consideration or rent. Nonetheless, the parties may incorporate non-appropriation language in their site right agreement to meet statutory obligations, or simply to address the risk of future unforeseen costs. See the endnote for further details.

13.8 Governing Law. This Agreement is governed by the laws of the State of _____, without regard to any conflict of law principles.

13.9 No Conflict. This Agreement and the Easement are made and given in connection with the Solar PPA. In the event of any conflict between the terms of this Agreement and the Solar PPA, the terms of the Solar PPA will control.

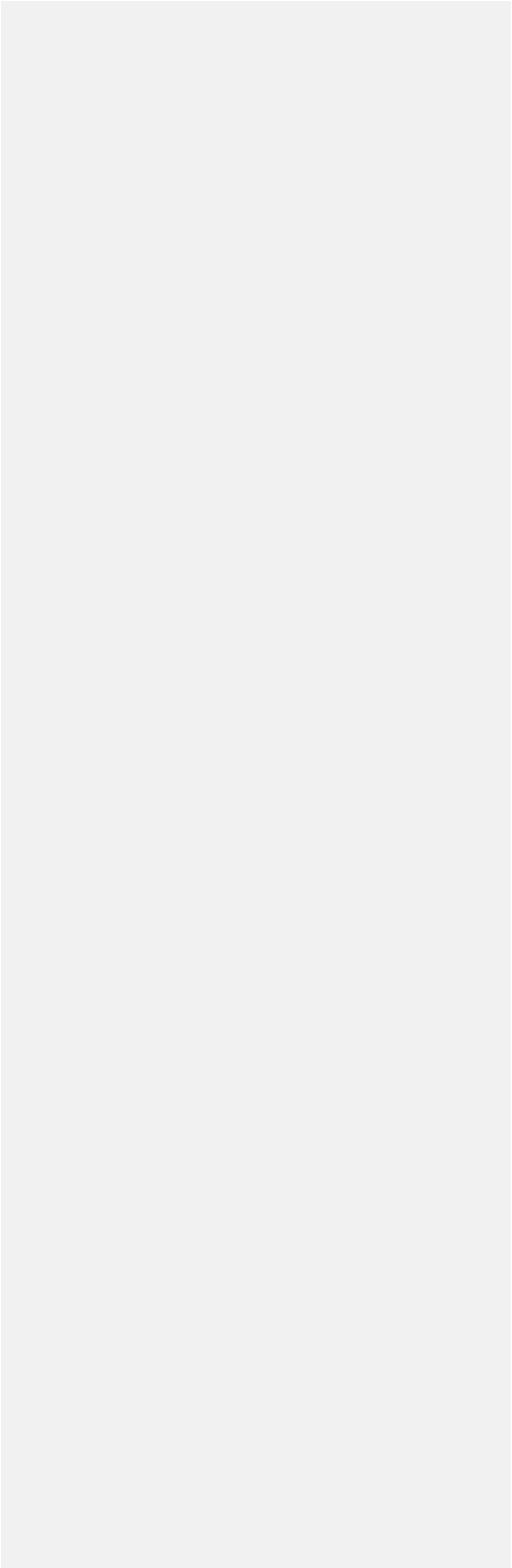
13.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

13.11 Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

13.13 Entire Agreement; Waivers. This Agreement constitutes the entire agreement between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

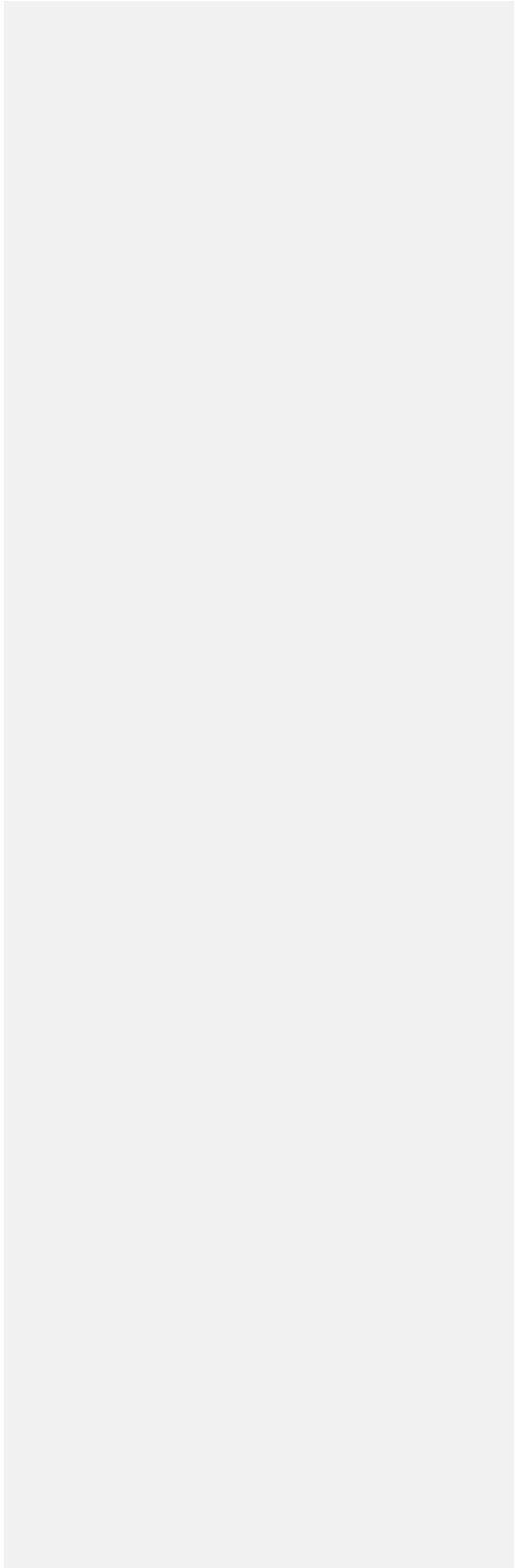


GRANTOR:

GRANTEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

EXHIBIT A
DESCRIPTION OF PREMISES

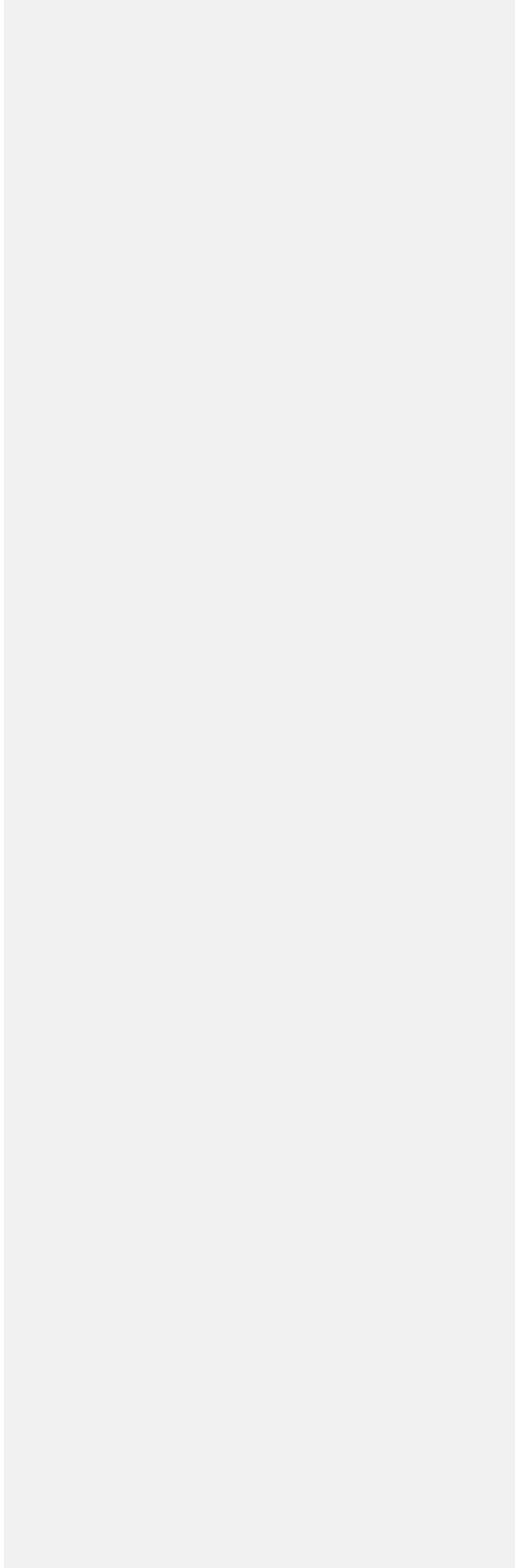
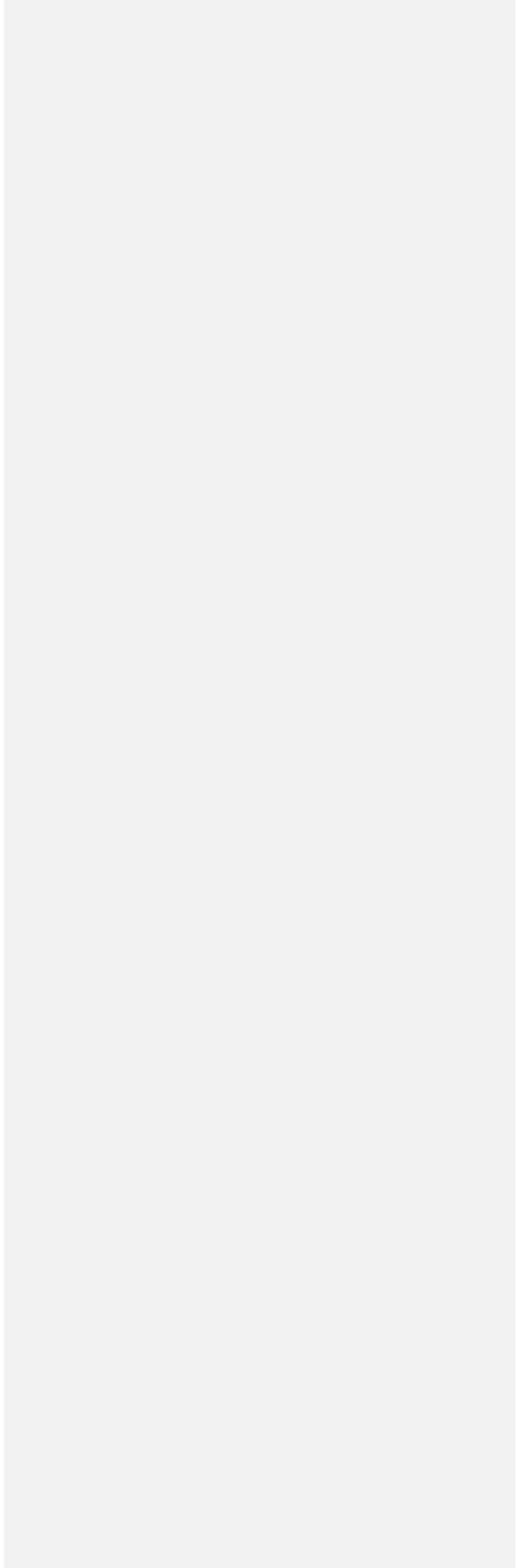


EXHIBIT A-1
DEPICTION OF SITE



5.3 Annotated Model Site Lease Agreement

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

SOLAR ENERGY FACILITY SITE LEASE AGREEMENT

(_____ Project)

This SOLAR ENERGY FACILITY SITE LEASE AGREEMENT (this "Agreement") is made, dated, and effective as of _____, 201_ (the "Effective Date") by and between _____, whose address is _____ ("Lessor"), and _____, a _____, whose address is _____ ("Lessee"). Each of Lessor and Lessee are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Lessor is the owner of certain real property located at _____, _____ County, _____ ("State"), consisting of land and certain improvements, buildings, and other structures located thereon, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the "Property").^{xvii}

B. Lessee is a developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for the delivery of electrical energy to be installed, maintained, operated, and used on the Property.

C. Lessor and Lessee are parties to that certain Solar Energy Power Purchase and Sale Agreement dated of even date herewith (the "Solar PPA"), pursuant to which Lessee (as System Owner) has agreed to sell to Lessor (as Host Customer), and Lessor has agreed to purchase from Lessee, all of the electrical energy produced by a solar photovoltaic electric generation system (as defined in the Solar PPA, the "System") to be installed and operated by Lessee on a portion of the Property.

D. In furtherance of the Solar PPA, Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive lease of that portion of the Property described and depicted on the attached Exhibit B (the "Premises") together with a right of ingress to and egress from the Premises for purposes of (i) constructing, installing, maintaining, owning, operating, repairing, and removing the System, (ii) transmitting electrical energy to, on, over, and across the Property, and (iii) accessing the System on, over, through, and across the Property on the terms set forth in this Agreement.

Commented [33]: Only one of the projects (Cohasset, MA) surveyed during the development of this Toolkit utilized a site lease agreement (as opposed to an easement or license). Consequently, the examples provided are primarily confined to the various sections of the model agreement for this particular project, though several provided examples refers to portions of a site license agreement covering the same topic area.

Commented [34]: This standard site lease agreement contemplates a "green" site. It does not include provisions for working on a potentially hazardous site, or compliance with laws specific to a capped landfill. See the end note for an example of a landfill site lease document.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and intending to be legally bound hereby, Lessor and Lessee hereby agree as follows:

AGREEMENT

1. **Grant of Lease; Purpose of Lease; Permitted Uses and Activities.**

1.1 Lease and Confirmation. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Premises to Lessee and grants to Lessee certain rights of access and use on, over, and across the Property for the purposes and activities set forth herein.

1.2 Purpose of Lease.^{xviii} The lease created by this Agreement is solely and exclusively for solar energy-generation and sale purposes, and throughout the Term (as defined in [Section 2](#)), Lessee shall have the exclusive right to use the Premises for solar energy generation and sale purposes.

1.3 Permitted Uses and Activities. The rights granted to Lessee in this Agreement permit Lessee to do the following:

1.3.1 Operations. Use the Premises and such other areas of the Property as identified and depicted on the attached [Exhibit B](#) for solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, maintaining, improving, repairing, relocating, and removing the System on and from the Premises; (b) making such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises; (c) parking in designated areas of the Property; (d) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (e) installing gates, fences, and such other security measures as may be necessary or desirable in Lessee's sole determination, to secure the System; and (f) installing, maintaining, using, and repairing on the Premises, inverters, electrical wires and cables required for the transmission of electrical energy (collectively, "**Operations**").

1.3.2 Ingress and Egress. This Agreement includes the right of ingress and egress to and from the System over and across the Property.

1.3.3 License for Temporary Construction Laydown Area. Lessor hereby grants to Lessee a license to use that portion of the Property depicted on the attached [Exhibit C](#) and incorporated herein by this reference, for the assemblage of materials to construct, erect, and install the System (the "**Laydown Area**"). Upon completion of construction and installation of the System, Lessee will remove all materials from the Laydown Area and will restore the Laydown Area to substantially the same condition in which it existed immediately prior to Lessee's use.

1.4 Solar Covenant. Lessor hereby covenants to provide for the free passage of solar radiation to the System. Any obstruction to the passage of direct solar radiation across the Property to the System by Lessor or a tenant or assignee of Lessor is prohibited. Trees, structures, and improvements located on the Property as of the Effective Date shall be allowed to remain, and Lessee may not require their removal. Lessor shall not

Commented [35]: If the lease is exclusive to the system owner, the parties may wish to state so here, and identify the lease as a net lease. Doing so ensures that all parties and third parties who read the lease (or a recorded memorandum of the lease) understand that no other person or entity may use the property, and in exchange for that exclusivity, the system owner is solely responsible for taxes and insurance in connection with the property—not just the system. See the end note for an example.

place or plant any trees, structures, or improvements on the Property after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee for any such trees, structures, or improvements. Lessee and Lessor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar covenant made in this [Section 1.4](#).

1.5 Lessee's Exercise of Rights; Acknowledgment of Lessor. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; *provided, however*, that Lessee will not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises or the Property. Nothing expressly or impliedly contained in this Agreement shall be construed to require Lessee to generate or sell any minimum or maximum amount of electrical energy from the System. Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, or to the ground, or a combination thereof.

2. Term; Termination.^{xix} The term of this Agreement shall commence on the Effective Date and shall continue for a period of _____ () years, which term may be extended for up to _____ () consecutive periods of _____ () years each (collectively, the "**Term**"); provided however, Lessee's right of access shall continue in full force and effect for a period of _____ () days following the expiration or earlier termination of this Agreement for purposes of removing the System (save and except for termination following Lessor's exercise of its purchase option pursuant to the Solar PPA). Notwithstanding the foregoing, if the System is not installed on the Premises on or before _____ [date], this Agreement will terminate automatically and be of no further force or effect as to the Property, Lessor, or Lessee. Upon the expiration or earlier termination of this Agreement, Lessee shall surrender to Lessor all of Lessee's right, title, and interest in and to the Premises by executing and recording in the real property records of _____ County, _____ (the "**Records**") an instrument evidencing the termination of this Agreement and Lessee's interest in the Property.

Commented [36]: A site lease agreement may contain express provisions for termination, rather than confining them solely to the PPA. The inclusion may be useful for providing additional flexibility under certain circumstances, or be necessary under applicable laws. Any term provision should be commensurate with the PPA term, and the parties may want to provide for early termination in the event the system is not installed. The parties may also wish to structure the term to include a due diligence period followed by a set term commencing on the operations date of the system.

3. Rent.^{xx} As consideration for the rights and interests granted by Lessor under this Agreement, Lessee shall pay Lessor rent in the amount of _____ Dollars (\$____) per year ("**Rent**"). Lessee shall pay Lessor the initial Rent payment within _____ () after the Effective Date for the first twelve (12-) month period of the Term, and shall thereafter pay each Rent payment on or before the applicable anniversary of the Effective Date for the forthcoming twelve (12-) month period.

Commented [37]: Rental amounts are usually nominal because the consideration primarily lies in the PPA. For an example of nominal rent, see the endnote.

4. Ownership of System; Financing Statements. The System is and shall remain Lessee's personal property at all times, shall not be a fixture on the Property, and may be removed by Lessee in accordance with the terms and conditions of this Agreement and the Solar PPA. Lessee shall have the right to file in the central and county records in which the Property is located financing statements evidencing Lessee'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 Lessor. Lessor shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Lessor. Lessor shall indemnify Lessee against all losses, claims, costs and expenses (including attorneys' fees) incurred by Lessee in discharging and releasing any such lien, encumbrance, pledge, levy or attachment arising by, under or through Lessor.

Commented [38]: A site right agreement is often limited to those provisions necessary to effectuate a right to the property. Typically, the basic representations and warranties are the authority to enter into the agreement; lack of conflicts; insurance; and indemnity. In some circumstances, the parties may desire to include all of the representations and warranties that are in the PPA either because the site is controlled by an agency or office of the municipality so that those provisions should be independent of the PPA and apply to the site right parties expressly or because governing law dictates that each contract include certain statements and obligations of the parties. See the endnote for an example, and further explanation on the issue of decommissioning.

5. Lessee's Representations, Warranties, and Covenants.^{xxi}

5.1 Security. Lessee shall provide all security measures that Lessee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Lessee's Operations.

5.2 Maintenance. During the Term, Lessee shall, at Lessee's sole cost and expense, maintain the System and the Premises in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies.

5.3 Clean Condition. Lessee shall not unreasonably clutter the Premises, and shall collect and dispose of any and all of Lessee's refuse and trash.

5.4 Indemnity. Lessee will indemnify Lessor against liability for physical damage to property and for physical injuries or death to Lessor, Lessor's property or the public, to the extent caused by Lessee's construction, operation or removal of the System on the Premises, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Lessor or Lessor's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any losses of rent, business opportunities, profits and the like that may result from Lessor's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of the System pursuant to this Agreement.

5.5 Hazardous Materials. Lessee shall not violate, and shall indemnify Lessor against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, State, or local laws or regulations ("**Hazardous Materials**").

6. Lessor's Representations, Warranties, and Covenants.

6.1 Authority; No Third-Party Rights. Lessor represents and warrants to Lessee that there are no circumstances known to Lessor and no commitments to third parties that may damage, impair, or otherwise adversely affect Lessee's rights hereunder. Lessor and each person signing this Agreement on behalf of Lessor has the full and unrestricted right and authority to do so. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

6.2 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Agreement; (ii) take any action that will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will,

during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

6.3 Title Review and Cooperation. Lessor shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Lessor are unable to obtain such agreements from any third party holding an interest in the Property, Lessee and any Assignee shall be entitled (but not obligated) to make payments in fulfillment of Lessor's obligations to such third party and may offset the amount of such payments from amounts due Lessor under this Agreement. Lessor shall also provide Lessee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

6.4 Indemnity. Lessor will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its invitees, contractors or the public, to the extent caused by the operations, activities, negligence or willful misconduct of Lessor or its invitees, permittees or tenants.

6.5 Hazardous Materials. Lessor shall not violate, and shall indemnify Lessee for, from, and against, any claims, costs, damages, fees, or penalties arising from a violation (past, present, or future) by Lessor or Lessor's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any Hazardous Materials.

7. **Taxes**^{xxii} Lessee shall pay all personal property taxes and assessments related to and imposed on the System by the applicable taxing authority. [Lessor shall pay all real property taxes and assessments related to and imposed on the Property by the applicable taxing authority, including any tax increase or assessment resulting from the installation of the System at the Property.] [**DRAFTING NOTE: MAY NOT APPLY TO MUNICIPAL SITUATIONS. ADJUST ACCORDINGLY.**]

Commented [39]: The exclusive lease of property, such as a landfill or vacant lot, usually involves a net lease in which the system owner pays all taxes. If the system owner does not have exclusive possession, taxes may be allocated based on use or property (personal versus real). This is a matter of facts and negotiations between the parties. See the endnote for an example.

8. **Insurance**^{xxiii} Each of Lessee [and Lessor] shall, at its own cost and expense, maintain, with a company or companies licensed or qualified to do business in the State of [____], commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party shall be an additional insured under the other Party's policy. For the avoidance of doubt, Lessee's property insurance shall cover the System, and Lessor's property insurance shall cover the Premises and Property.

Commented [40]: This insurance provision provides a starting point for negotiations but is not intended to be static. Insurance provisions may be dictated by a municipality's governing law and also by the financing parties. For examples of the inclusion of insurance requirements, see the endnote.

9. **Assignment.**

9.1 Assignment by Lessor; Transfer of the Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System, that no portion or component of the System is a fixture, and that the System may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered with the conveyance of any fee or leasehold interest in or to any portion of the Premises (any such conveyance, a "**Transfer**"). Lessor shall notify Lessee in writing no fewer than fourteen (14) days before any Transfer of all

or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer. This Agreement shall survive any Transfer.

9.2 Assignment by Lessee. Lessee and any Assignee (as defined below) shall have the right, without need for Lessor's consent, to finance the System and, provided that there is a contemporaneous assignment under the Solar PPA to the same Assignee, to convey, assign, mortgage, or transfer to one or more Assignees this Agreement (or any right or interest of Lessee in this Agreement), Lessee's leasehold interest in the Premises, or the System. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of the System, including, without limitation, any Lender (as defined in [Section 10.1](#)); (ii) any purchaser of the System, or any purchaser of all or any portion of Lessee's interest in this Agreement and the Solar PPA; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company as described in subclause (iii); or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Lessee will give notice to Lessor of any such assignment (including the address of the Assignee for notice purposes), provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Lessor with respect to such assignment until such notice shall have been given.

10. **Lender Protections**^{xxiv}

10.1 Notice of Lender. Lessee shall deliver to Lessor written notice of and contact information for any bank, financial institution or other institutional investor providing debt or equity financing for the System (each, a "Lender") and any trustee or agent acting on any such Lender's behalf, within thirty (30) days of any such party becoming a Lender.

10.2 Lender Collateral Assignment. Upon notice and delivery by Lessee pursuant to [Section 10.1](#) of the name and contact information for any Lender, then Lessor shall be deemed to:

10.2.1 Acknowledge any collateral assignment by Lessee to the Lender, of Lessee's right, title and interest in, to and under this Agreement, as consented to under [Section 10.2.2](#);

10.2.2 Acknowledge that any Lender, as such collateral assignee, shall be entitled to exercise any and all rights of lenders generally with respect to Lessee's interests in this Agreement; and

10.2.3 Acknowledge that it has been advised that Lessee 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.

10.3 Lender Cure Rights Upon Lessee Default. Upon any Lessee Default (as defined in [Section 11.1](#)), Lessor shall deliver to each Lender of which it has notice a copy of any notice of default delivered under [Section 11](#). Following the receipt by any Lender of any notice that Lessee 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 Lessor

Commented [41]: These provisions generally reflect similar provisions in the parties' PPA and are negotiated on a case-by-case basis. In virtually all instances, however, financing parties will want the rights of notice-and-cure in the event of a system owner/lessee default; and if the lease would otherwise terminate because of such a default, the lender will want the right to step into the system owner's lease rights and then assign the lease to a new system owner. The lender will also want to document its right to a security interest in the system. These rights help ensure the lender's investment is protected for the term of each of the PPA and the site lease.

agrees to accept any cure tendered by the Lenders on behalf of Lessee 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 Lessee, or cause the same to be remedied, as is given to Lessee after Lessee'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; and (b) the Lender shall not be required to cure those Lessee Defaults 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 Lessee and perform the duties of Lessee hereunder for purposes of curing such Lessee Default. Lessor 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 Lessee, but subject to the terms and conditions of this Agreement.

10.4 New Lease to Lender. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Lessor shall give prompt written notice to each Lender of which Lessor has notice. Lessor shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Premises with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, and shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new lease, the Lender shall (i) pay Lessor any amounts that are due Lessor from Lessee; (ii) pay Lessor any and all amounts that would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease; (iii) perform all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations that have not been performed by Lessee that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations that are not reasonably susceptible of being cured by such Lender. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Lessor. The provisions of this Section 10.4 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy the Premises without hindrance by Lessor or any person claiming by, through or under Lessor, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11. **Default and Termination; Remedies; No Cross Default.**

11.1 Lessor's Right to Terminate^{xv} Except as qualified by Section 10 above and subject to all notice and cure rights set forth therein, Lessor shall have the right to terminate this Agreement after (i) a material default in the performance of Lessee's obligations under this Agreement (a "**Lessee Default**") has occurred and remains uncured, (ii) Lessor simultaneously notifies Lessee and all Lenders in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Lenders, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Lender, Lessee or Lender has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion. Any termination by Lessor after the applicable notice and cure periods set forth above and in Section 10 shall be effective upon thirty (30) days' written notice to Lessee.

Commented [42]: Some parties include bankruptcy or other financial situations as an event of default. Inclusion of these situations as events of default may be a matter of case-specific negotiations or statutory requirements that demand the municipality contract only with parties of a specific credit rating or asset value. It is important to note that most operating entities are special-purpose LLCs with zero or little net worth, so credit rating standards and net worth limits will be of little value for evaluating assignees. For an example of evaluating the viability of an assignee, see the endnote.

11.2 Lessee’s Right to Terminate. Lessee shall have the right to terminate this Agreement at any time before the commencement of operations of the System upon thirty (30) days’ prior written notice to Lessor. After the System commences operations, Lessee shall have the right to terminate this Agreement if a material default in the performance of Lessor’s obligations under this Agreement (a “**Lessor Default**”) has occurred and remains uncured after thirty (30) days’ notice from Lessee of such Lessor Default. Any termination by Lessee after the applicable notice and cure period set forth above shall be effective upon thirty (30) days’ written notice to Lessor.

11.3 No Cross Default. No event of default by Lessee, as System Owner, or Lessor, as Host Customer, pursuant to the Solar PPA shall constitute a Lessee Default or a Lessor Default under this Agreement. Any amendment, modification, expiration, or termination of the Solar PPA shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties hereto. Notwithstanding the foregoing or anything in this Agreement to the contrary, each of Lessor and Lessee has the right to terminate this Agreement if the Solar PPA terminates as a result of a default of either party thereunder.

12. Notice. Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may also be sent by fax transmission [or email] provided that such transmission includes delivery confirmation [or read-receipt confirmation, as applicable]:

Notice to Lessor:

 Facsimile No.: _____
 Attn: _____
 Tel. _____

With a copy to:

 Facsimile No.: _____
 Attn: _____
 Tel. _____

Notice to Lessee:

 Facsimile No.: _____
 Attn: _____
 Tel. _____

With a copy to:

 Facsimile No.: _____
 Attn: _____
 Tel. _____

If to any Lender or Assignee: At the address given for such Lender or Assignee pursuant to Section ____ or Section ____.

Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual Person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

13. Legal Matters.

13.1 Governing Law; Dispute Resolution. This Agreement shall be governed by the laws of the State of _____, without regard to any conflict of laws principals. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Premises are situated, or if none, then a federal court nearest the county in which the Premises are situated.

Commented [43]: A municipality's dispute resolution steps may be dictated by law and require arbitration, mediation, or other methods. In general, the governing law, venue, and dispute resolution provisions should reflect (and not conflict with) the PPA terms.

13.2 Consequential Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER LESSEE NOR LESSOR SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT. THE FOREGOING PROVISION SHALL NOT PROHIBIT LESSEE OR LESSOR FROM SEEKING AND OBTAINING GENERAL CONTRACT DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS AGREEMENT.

13.2.1 Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

Commented [44]: Waiver of a jury trial may speed dispute resolution and reduce the perception of potential for bias, especially when the system owner is not a local business. However, some governing law may prevent a municipality from waiving a jury trial. For example, California law does not support waiver of a right to trial by jury. Counsel for the contracting agency should provide advisement on this issue.

14. Miscellaneous.^{xxvi}

14.1 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 14.1.

Commented [45]: Although most often seen in the PPA rather than the lease, a lease may contain a bond or financial assurance requirement to protect the lessor from incomplete work or a system left on site. This may be especially valuable if a municipality negotiates a single PPA for multiple sites, and each site host or owner then signs a site right agreement with the system owner. The inclusion of removal and restoration obligations creates a direct responsibility to the site host. For an example, see the end note.

14.2 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto.

14.3 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any Assignee all information pertaining to the financial terms of or payments under this Agreement, the System and related equipment design, methods of operation, and the like, whether disclosed by Lessee or any Assignee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Lessor shall get Lessee's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement or the System.

14.4 Quiet Enjoyment. Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Agreement.

14.5 Successors and Assigns; Agreement to Run With Land. This Agreement and the leasehold interest granted herein shall run with the land and survive any Transfer. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties.

14.6 Severability. In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Lessor and Lessee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

14.7 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

14.8 Memorandum of Lease. Lessor and Lessee shall execute in recordable form and Lessee shall then record in the Records a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Lessor. Lessor hereby consents to the recordation of any Assignee's interest in the Premises.

14.9 Amendments. This Agreement may be amended only in writing signed by Lessee and Lessor, or their respective successors in interest.

14.10 Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

14.11 Entire Agreement. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between the Parties with respect to such subject matter.

14.12 Waivers. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any term of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGES FOLLOW]

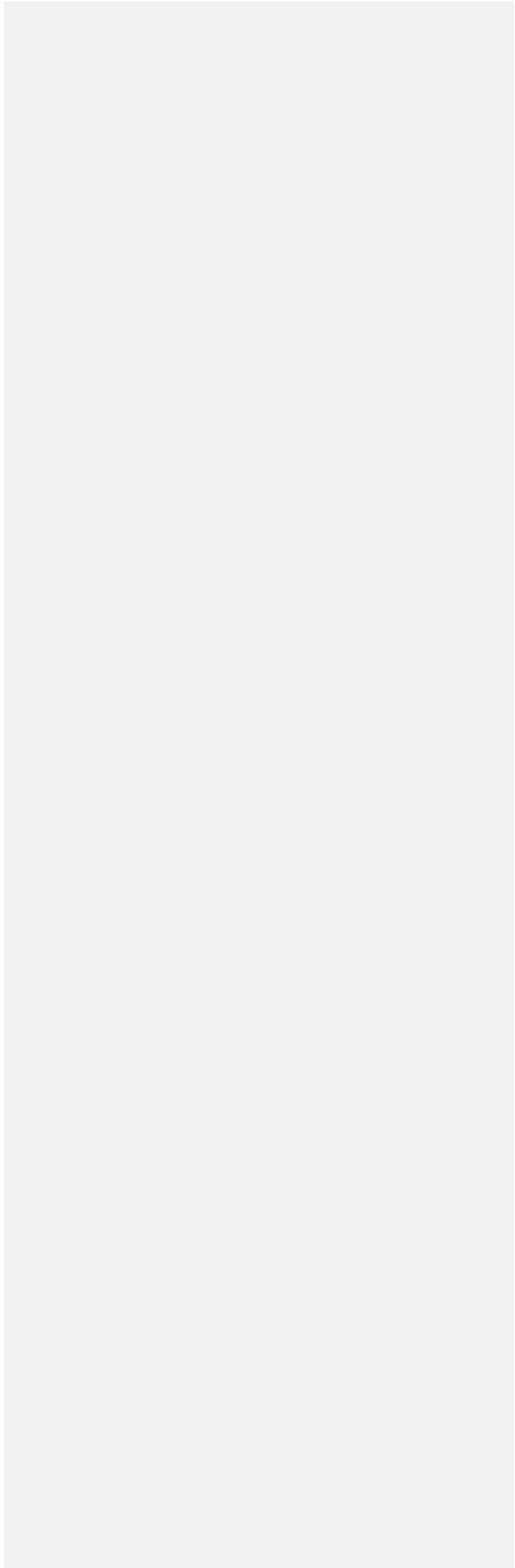
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSOR:

LESSEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

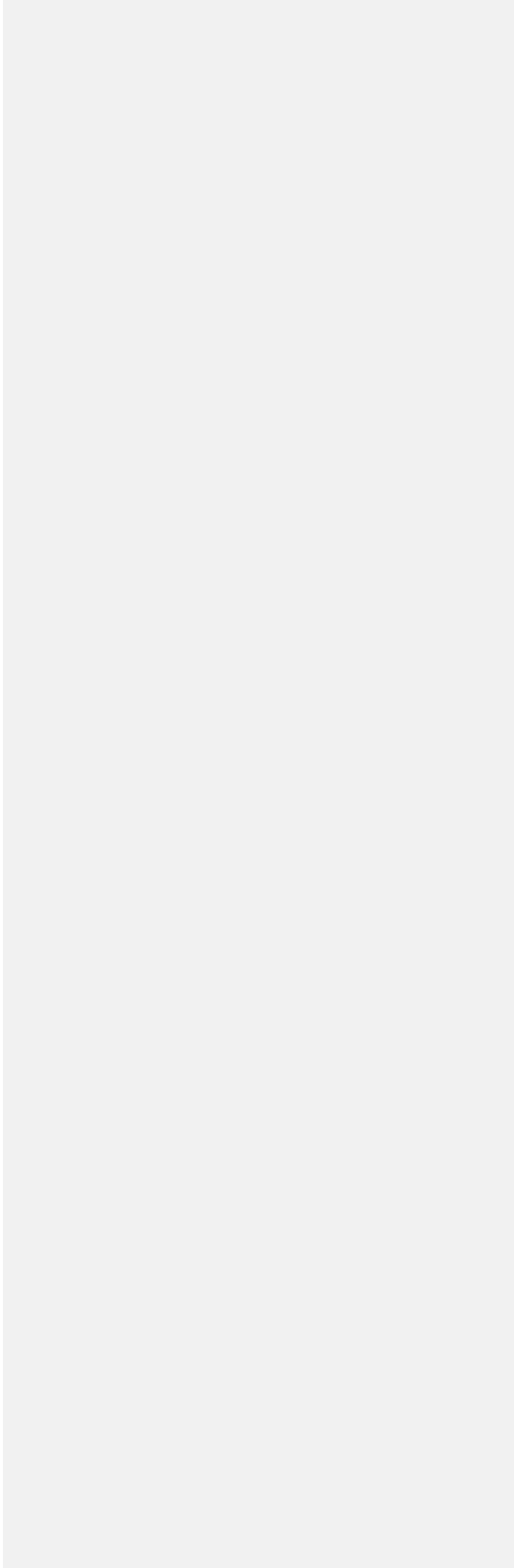


EXHIBIT B
DESCRIPTION AND DEPICTION OF PREMISES

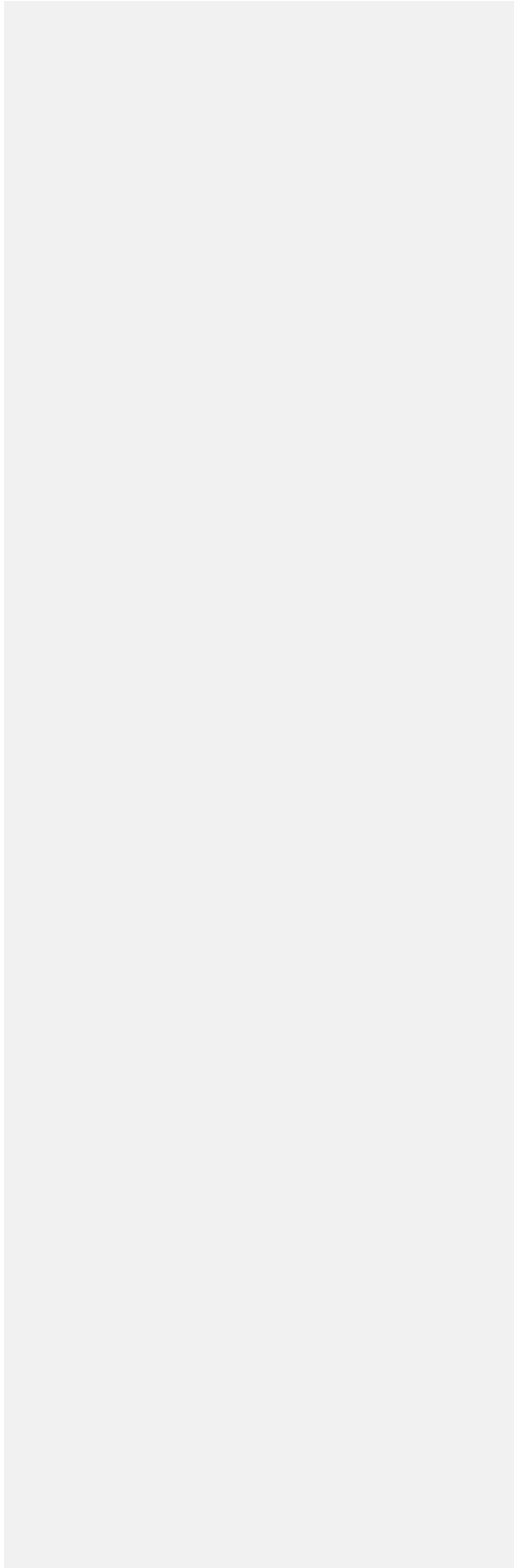
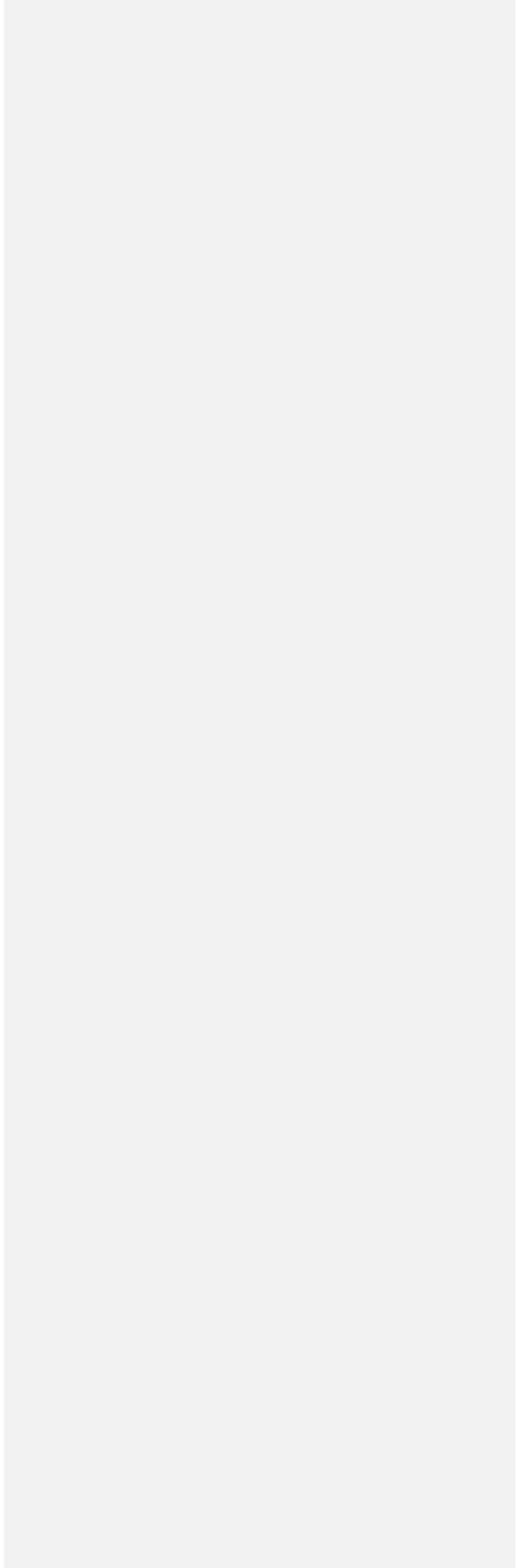


EXHIBIT C
DEPICTION OF TEMPORARY LAYDOWN AREA



5.4 Annotated Model Site License Agreement

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

[RECORDING REQUESTED BY,
AND AFTER RECORDING,
RETURN TO: _____

Commented [46]: State or local law may determine whether the site license (or other site right agreement) affecting public property may be recorded. In addition, municipalities may still require a quitclaim deed or similar instrument evidencing termination if the PPA terminates early.

(Space Above this Line for Recorder's Use Only)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "**Agreement**") is made and dated this ____ day of _____, 201__, (the "**Effective Date**") by and between [MUNICIPALITY OR SITE CONTROLLER], whose address is _____ ("**Licensor**"), and [SYSTEM OWNER], whose address is _____ ("**Licensee**"). Each of Licensor and Licensee is sometimes referred to in this [Memorandum/Agreement] as a "**Party**" and collectively as the "**Parties.**"

RECITALS

A. Licensor is the owner of certain real property [together with certain improvements and structures located thereon] located in [COUNTY NAME], State of _____, more particularly described on the attached Exhibit A, which is incorporated herein by this reference ([the "**Property**"] or [the "**Premises**"]).

B. Licensor and Licensee have entered into a Solar Power Purchase Agreement dated on or about the Effective Date (the "**PPA**") pursuant to which Licensee has agreed to sell to Licensor, and Licensor has agreed to purchase from Licensee, energy generated by a photovoltaic electric generating system owned by Licensee (the "**System**").

Commented [47]: The term "Property" is commonly used to denote the entirety of a parcel. The term "Premises" or "Site" may be used for a subset of the property, such as a roof or just a portion of the surface of the land. If "Premises" or "Site" is used, an exhibit showing a detailed drawing or map of the premises should be used. If the license area is an even smaller subset of the improvement (for example, one roof on a multi-structure school), consider describing a "License Area" in more detail in Section 1 below.

C. The PPA is for a term of [_____] (##) years, beginning on _____, 20__ and ending on _____, 20__ unless the PPA is earlier terminated or extended, as provided in the PPA.

D. Pursuant to the PPA, Licensor has agreed to grant Licensee an [irrevocable]^{xxvii}, non-exclusive license to enter upon the [Property/Premises] for the purposes and on the terms set forth in this Agreement.

Commented [48]: The use of the term “irrevocable” is intended to provide certainty to the provider that the license will not be revoked prior to the end of the PPA, but variations are possible. See the endnote for further details.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **GRANT OF LICENSE**^{xxviii} Licensor hereby grants to Licensee a license to access, enter, cross, and use the [Property/Premises] for the limited purposes of (a) installing on, maintaining, operating, and removing from the [Property/Premises] the System; (b) vehicular and pedestrian access to the System; and (c) temporary parking of vehicles on the Property for the foregoing limited purposes (the “**License**”). The License may be exercised by Licensee and by Licensee’s employees, agents, and contractors. Licensee will consult with Licensor to schedule and coordinate Licensee’s activities on the [Property/Premises], as set out in the PPA. Such notice by Licensee may be given via email to the address for Licensor set forth in the PPA.

Commented [49]: In our review of many forms of site right agreements, we have seen the same essential “use and access” rights granted in non-traditional forms. See the endnote for further details.

2. **TERM; NATURE OF LICENSE**^{xxix} This Agreement and the License and rights granted herein are effective as of the Effective Date and expire on _____. The License is nonrevocable except upon expiration or earlier termination of the PPA, as described therein.

Commented [50]: Generally, the license term should be at least as long as the PPA term, and expire on the earlier of the purchase of the PV system by licensor or 120 days after the expiration of the PPA to provide for removal. The term should also provide for early termination in the event the system is not installed or otherwise does not reach operations. See the end note for an example and one variation seen by the authors.

3. **USE OF PREMISES.**

3.1 **Use Rights.** Licensee’s right to use the Premises during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, improving, repairing, relocating, and removing the System on and from the Premises; (b) constructing and installing supporting structures, including but not limited to ground fasteners, such as piles and posts, and all necessary below- and above-ground foundations; (c) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing such security measures as set out in the PPA to secure the System; and (e) installing, maintaining, using, and repairing on the Premises fiber optic cables, inverters, meters, electrical wires and cables required for the collection and transmission of electrical energy to and from the System.

3.2 **Temporary Laydown Area.** During installation of the System and any maintenance or repair activities related thereto, Licensee may use portions of the Premises designated for storage of System components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the installation of the System, taking all commercially reasonable steps to maintain the Premises in compliance with county and municipal ordinances and regulations.

3.3 **Impacts to Premises.** Upon completion of installation of the System, Licensee will replace any disturbed soil or vegetation, and restore the Premises to as near the condition of the Premises as of the Effective Date as commercially reasonable. Licensee shall immediately repair, replace, or reimburse Licensor for any damage to the Premises caused by Licensee’s negligent acts or omissions on the Premises. The Parties

agree that installation of the System will require mounting and/or supporting such system on the ground of the Premises, and such does not constitute damage to the Premises within the meaning of this Section 3.3.

4. **INDEMNITY.**^{xxx} Licensee will indemnify, defend, and hold harmless Licensor for, from, and against (a) any violation of law, ordinance, rule, regulation or permit condition by Licensee, its employees, agents or contractors arising from or related to Licensee’s activities on or use of the Property; (b) physical damage to property; and (c) physical injuries or death to any person to the extent caused by Licensee’s intentional or unintentional acts, or negligence in connection with Licensee’s exercise of the License and activities on the [Property/Premises], except to the extent such violations, damages, injuries or death are caused or contributed to by the negligent acts or omissions or willful misconduct of Licensor or Licensor’s tenants, employees, agents, or contractors.

Commented [51]: This and all provisions should be consistent with the terms of the PPA. With respect to interference, licenses are implicitly nonexclusive, but some parties elect to include express provisions addressing the host’s right to grant other licenses for uses that do not interfere with the system operation. For further details and examples, see the endnote.

5. **COMPLIANCE WITH LAWS.** Licensee will comply with all laws, ordinances, rules, regulations and permit conditions related to the [Property/Premises] and Licensee’s operations thereon.

6. **INSURANCE.**^{xxxi} Until such date, if any, as the System is removed from the Property/Premises and the Property/Premises is restored in accordance with the PPA and all applicable laws, Licensee will, at its expense, maintain a commercial general liability insurance policy insuring Licensee and Licensor against loss or liability caused by Licensee’s use of the Property under this Agreement, in an amount not less than [_____ Million Dollars (\$____,000,000)] of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Certificates of such insurance must be provided to Licensor at Licensor’s reasonable request.

Commented [52]: Some site license agreements include general public liability, excess liability, worker’s compensation, auto and other insurance requirements, as in Section 9 of the Boulder Valley School District Site License Agreement. As an alternative to insurance provisions set out in the parties’ site right agreement, the parties may agree to incorporate by reference the insurance provisions of the PPA. See the end note to access the cited example.

7. **MISCELLANEOUS.**

7.1 **Notices.** All notices or other communications required or permitted by this Agreement shall be given in accordance with the terms of the PPA.

7.2 **Waiver.** The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach of any provision of this Agreement will not constitute a waiver of any provision of this Agreement or limit the Party’s right to enforce any provision or exercise any right in the future.

7.3 **Modification.** No modification or amendment of this Agreement is valid unless made in writing and executed by the Parties.

7.4 **Governing Law.** This Agreement and any disputes arising out of this Agreement will be governed by and construed under the laws of the State of _____.

7.5 **WAIVER OF CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF LICENSOR AND LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

7.6 **No Partnership.** Nothing contained in this Agreement may be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties to this Agreement.

7.7 **No Conflict.** Nothing in this Agreement shall be deemed to amend or modify the terms of the PPA or any other agreement between Licensor and Licensee. In the event of any conflict between this Agreement and the terms of the PPA, the terms of the PPA shall control in all instances.

7.8 **Assignments; Successors and Assigns.** This Agreement and the License may be assigned or transferred only in accordance with the terms of the PPA. This Agreement and the License shall run with the [Property/Premises] and inure to the benefit of each of Licensor and Licensee, and their respective heirs, successors, and assigns.

7.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LICENSOR:

LICENSEE:

_____,
a municipal corporation

_____,
a[n] _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Commented [53]: Include any necessary and appropriate attestations, signatures by municipal counsel, or other authorizations.

[ACKNOWLEDGMENT PAGES FOLLOW]

ACKNOWLEDGMENTS

EXHIBIT A

DESCRIPTION OF THE PROPERTY/PREMISES

[Include legal description of Property, description of premises as applicable, and any maps or drawings showing any limitations on license area.]

Commented [54]: Add appropriate notary acknowledgment blocks for state where signatories execute this agreement.

6 Additional Resources

6.1 Reports, Fact Sheets and Other Resource

The following existing resources were reviewed for this Toolkit, and their findings were incorporated and referenced in various places throughout the text. Users may wish to consult the full text of each for additional information in certain areas.

6.1.1 NREL Public Sector PV Financing Report

Full Title/Link: [Solar Photovoltaic Financing: Deployment on Public Property by State and Local Governments](#)

Author: National Renewable Energy Laboratory (NREL)

Date: May 2008

Resource Summary: This report describes and summarizes the numerous options that public sector entities have for financing PV projects, including both direct ownership models and third-party owned models. It lays out the principle incentives available for PV projects, direct ownership financing options such as Clean Renewable Energy Bonds (CREBs) and tax-exempt bonds; variations on third-party ownership models, their structure, benefits, and drawbacks; and methods of insuring PV systems. It also contains examples of public sector projects and summaries of the critical steps in pursuing different financing models. While some of the specific information on available incentives is now somewhat dated, the report remains useful as a tutorial on the general PV financing options available to public sector entities and the key considerations for different arrangements.

6.1.2 TSF Solar RFP Issue Brief

Full Title/Link: [Steps to a Successful Solar Request for Proposal \(RFP\)](#)

Author: The Solar Foundation

Date: October 2012

Resource Summary: The resource begins with profiles of two local procurement efforts, the City of Milwaukee's effort to procure solar water heating installations on local firehouses, and the City of San Jose's effort to procure solar PV resources under a PPA. It then lays out a step-by-step process for conducting and a successful RFP, from pre-RFP activities such as defining goals and engaging stakeholders, to considerations on broad RFP design; the use of outside consultants; and bid evaluation. It also describes the key elements of an RFP, such as provider qualifications and assurance of roof integrity, contains links to a number of sample RFPs, an example of the bid evaluation criteria used in one RFP, and provides a table outlining the categorized content of the various RFPs surveyed in the research. The brief contains a short section on RFPs for third-party owned systems, but it is not exclusively oriented around RFPs for third-party owned systems or retail PPAs.

6.1.3 TSF Solar Property Leasing Issue Brief

Full Title/Link: [Leasing Municipal and Private Property for Solar: Key Steps and Considerations](#)

Author: The Solar Foundation

Date: March 2012

Resource Summary: This resource outlines siting and legal factors that local governments should consider when leasing property to solar developers. It covers the various considerations that must be made with respect to site assessment and selection; legal obstacles that may exist for leasing public property; and key considerations and elements of property leasing RFPs and agreements. It also contains brief descriptions of property leasing arrangements entered into by the cities of Kingman, Arizona and Boulder City, Nevada.

6.1.4 NREL PPA Checklist

Full Title/Link: [Power Purchase Agreement Checklist for State and Local Governments](#)

Author: National Renewable Energy Laboratory (NREL)

Date: October 2009

Resource Summary: This 12-page fact sheet provides general information on a number of the financial, legal, and logistical questions relevant to local government PPA projects. It includes an overview of the PPA model; guidance for planning out the various steps in a PPA project; financial and contractual considerations; incentive and policies background; basic logistical considerations for roof-mounted and ground-mounted systems; insurance issues; and potential state and local constraints against entering a PPA. It further includes separate summary tables describing the PPA terms of three successful projects and the basis, implications, and suggested considerations for dealing with different types of legal constraints (e.g., PPA tenor, voter approval of debt limitations).

6.1.5 Solar America Cities Webinar on Navigating Issues with Municipal PV Systems

Full Title/Link: [Navigating the Legal, Tax and Finance Issues Associated with the Installation of Municipal PV Systems](#)

Author: National Renewable Energy Laboratory (NREL)

Date: June 2008

Resource Summary: This resource was developed based on the experiences of the presenter (Patrick Boylston of Stoel Rives LLP) assisting municipalities with local PV projects, and the requests for information received by technical assistance personnel from many of the 25 Solar America Cities. The resource itself is a transcript of a two-hour conference call. It contains further details on many of the potential issues identified in the NREL PPA Checklist, including municipal debt limitations, power contracting restrictions, granting of indemnifications, and limits to granting site interests. It also discusses basic strategies for crafting a PPA that meets the needs of the local government and is financeable from the perspective of the provider. In this respect, it recommends that local governments identify critical “must haves” prior to issuing an RFP and those that might be negotiated, explains the “must haves” of PPA providers, provides guidance on working through common problems, summarizes typical pricing structures, and explains the basics and limitations of combining multiple incentive streams.

6.1.6 Solar Outreach Project Webinar on Installing Solar on Municipal Facilities

Full Title/Link: [Installing Solar on Municipal Facilities Webinar](#)

Author: International City/County Management Association (ICMA)

Date: January 2012

Resource Summary: This webinar profiles the experiences and lessons learned in procuring solar in three cities: San Jose, CA; Milwaukee, WI; and Tucson, AZ. Presentations are provided by local personnel involved in the respective projects, each of which was distinctly different. The City of San Jose presentation describes the city’s experience with conducting a successful solar PPA RFP for roughly 4 MW on more than 25 sites, and how its prior unsuccessful procurements informed the development and design of the successful RFP. The City of Tucson presentation describes the city’s experience with using Clean Renewable Energy Bonds

(CREBs) to finance city-owned projects totaling roughly 1 MW on seven sites. The City of Milwaukee presentation describes the development of a suite of city-owned solar PV and solar thermal projects on municipal facilities.

6.1.7 Tufts University Report on MA Solar PPA Risks

Full Title/Link: [Solar Power Purchase Agreements: Identifying Risks for Municipalities in Massachusetts](#)

Authors: Kaitlin Kelly, Ben Mendelson, Takayuki Suzuki & Brian Szekely (Prepared for the Cadmus Group)

Date: May 2012

Resource Summary: This resource explores the risks of entering into retail solar PPAs, as perceived by 18 Massachusetts municipalities. It was developed using interviews with municipal staff, as well as with data collected from private developers, outside consultants and state employees. The report contains introductory sections summarizing federal and Massachusetts state incentives for solar as they affect PPA arrangements; the basic structure of a PPA; and Massachusetts laws governing energy procurement. It goes on to discuss the various types of insurance often contemplated in a municipal PPA; the issues that may arise; potential risks and the perception of risks associated with net metering and the state SREC market; and contract specifics such as term, pricing, buyouts, and performance bonds. It closes with two primary recommendations, advising that the Cadmus Group (as an owner agent) explore developing mechanisms that reduce SREC price risk for developers, and that the Massachusetts Department of Energy Resources (DOER) publish a model PPA as part of the assistance and guidance it provides to municipalities on energy service contracting.

6.1.8 MA DOER Solar Landfill Guidebook

Full Title/Link: [The Guide to Developing Solar Photovoltaics at Massachusetts Landfills](#)

Author: Massachusetts Department of Energy Resources (DOER)

Date: May 2012

Resource Summary: This resource provides a comprehensive suite of information for local governments interested in pursuing solar development on landfills in Massachusetts. While some elements of the guidebook are specific to Massachusetts, many of the components are equally relevant to other jurisdictions. The guidebook starts with basic background information on various types of PV technology and incentives available for solar projects. It then delves into considerations for designing and developing solar on landfills (e.g., feasibility assessments, affect on operations, and technical issues); potential ownership structures; permitting and interconnection; managing a procurement process; and long-term management. Case studies of the Brockton Brightfields and Easthampton landfill projects are also provided, along with a project checklist and further details on Massachusetts' permitting requirements.

6.1.9 NREL/EPA Landfill PV Best Practices Report

Full Title/Link: [Best Practices for Siting Solar Photovoltaics on Municipal Solid Waste Landfills](#)

Author: National Renewable Energy Laboratory (NREL) and the U.S. Environmental Protection Agency (EPA)

Date: February 2013

Resource Summary: This resource provides a large amount of technical information on designing and constructing solar facilities on municipal solid waste landfills, focusing on the engineering elements of array design and the special considerations that must be made for landfill solar projects. As such, it is not a guide for local government procurement of PV on landfill sites, but it does include some information on less technical aspects, such as local community engagement and facilitation, financing and procurement options, tools and resources, and examples of successful projects.

6.1.10 Arizona State Sample PPA and Site Access Template

Full Title/Link: [Sample Arizona Power Purchase Agreement in PDF](#), [Sample Arizona Power Purchase Agreement in Word](#)

Author: [Arizona State University Sustainable Cities Network](#)

Date: May 2012

Resource Summary: This resource was developed for Sustainable Cities Network participants for the purpose of providing a starting point for local agencies in Arizona considering solar PPAs. A number of local governments, as well as the National Renewable Energy Lab, participated in the crafting of the document. The template document is designed to be customizable, and contains comment boxes indicating the various portions of the agreement that may be appropriate to modify in the context of a specific project. However, the noted customization options are largely oriented around very specific aspects of a PPA (e.g., whether the purchase involves solar thermal in addition to PV) and terminology (e.g., name of the permitting department) as opposed to the broader considerations of aspects such as risk allocation. Thus, in contrast to the Model PPA Template developed as part of this Toolkit, it does not contain annotations, suggestions for alternative language, or elaborate on the considerations for modifying different sections.

6.1.11 MA DOER Energy Management Services Resources Website

Full Title/Link: [MA DOER Energy Management Services \(EMS\) Guidance and Model Documents](#)

Author: Massachusetts Department of Energy Resources (DOER)

Resource Summary: The MA DOER offers a comprehensive suite of services to local governments procuring renewable energy and energy efficiency services under the state's Chapter 25A procurement process, for which the state has established uniform procedures. The associated DOER web site contains a series of model documents, including general guidance, a step-by-step process diagram, a model RFP and contract, case studies, and a list of frequently asked questions. It also provides contact information for staff that can offer assistance to local jurisdictions, aimed at helping them avoid problems in the procurement process.

6.1.12 Gaston County, NC: Case Study

Full Title/Link: [Solar In Small Communities: Gaston County, NC Case Study](#)

Author: North Carolina Solar Center

Date: April 2013

Resource Summary: This brief resource describes the process, obstacles, and lessons learned by Gaston County, NC when it successfully installed a 740 kW solar array on a government building. While retail PPAs are not permitted in North Carolina, the county was able to work around this limitation by entering into a 10-year roof lease the provider, with a 10-year extension option and an option to purchase the system or have it removed at the end of the term. The roof lease will generate from \$8,000 - \$11,600 in annual revenue for the County, providing an immediate financial benefit at no costs to the county. The county is considering further land leases to other developers.

6.1.13 Town of Cohasset, Massachusetts: Example RFP, Site Leases, and PPA Documents

Example Documents: [Town of Cohasset Request for Proposals](#), [Town of Cohasset Request for Proposals Q&A](#), [Town of Cohasset Draft Site Lease \(Rooftop\)](#), [Town of Cohasset Draft Site Lease \(Landfill\)](#), [Town of Cohasset PPA](#)

Resource Summary: This resource contains a series of documents issued by the Town in conjunction with a 2012 RFP seeking to jointly procure solar PPA projects on the local landfill and middle school under the state's Chapter 30B procurement protocols. It includes the RFP, separate draft site leases for the school and landfill properties, and a draft PPA. While a full case study was not conducted for this particular project, the

draft documents may prove useful for other local governments pursuing similar projects. Of particular note, the RFP contains requests for educational components to be incorporated within the project, which include digital, web-accessible displays of weather activity, energy generation, and energy cost savings for both sites, and a walking trail and picnic-type structure for the landfill site.

6.1.14 Town of Norfolk, Massachusetts: Example PPA and Site Lease Documents

Example Documents: [Town of Norfolk Onsite Solar Power Purchase Agreement](#), [Town of Norfolk Onsite Solar Photovoltaic System Site Lease Agreement](#)

Resource Summary: This resource contains a copy of an executed site lease and PPA for a 2011 project sited on a local landfill. While a full case study was not conducted for this particular project, the documents may prove useful for other local governments pursuing similar projects.

6.2 Local Projects Analyzed for this Toolkit

6.2.1 City of Cincinnati, Ohio: Case Study

Request for Qualifications: [City of Cincinnati Request for Qualifications](#) (Issued: 12/10/2010; Due: 02/11/2011)

Executed PPA: [City of Cincinnati Power Purchase Agreement](#) (Executed: 12/11/2011)

Case Description: In December 2010 the City of Cincinnati, Ohio released a Request for Qualifications (RFQ) for qualified providers interested in entering into solar PPAs with the city. While the initiative was structured as an RFQ as opposed to a Request for Proposals (RFP), and offered no guaranteed work for potential providers, it did require applicants to submit technical and pricing proposals for a total of eight sites operated by different city agencies. Successful awardees (multiple awards were to be considered) would then enter a contract with the city to be used on an “as requested basis” and then be permitted to respond to RFPs issued by individual city agencies during a three-year period (plus two additional annual contract renewal periods).

The request was devised specifically to seek out PPA offers with initial terms of 10 years, and 15-year and 20-year extension options. It further asked providers to assume that the facilities would be located on existing rooftops, but allowed other locations on those sites to be considered. It did not contain a model or draft PPA, and instead required applicants to submit their proposed PPA with the technical proposals. In the RFQ, the city stated an intention to retain the RECs associated with energy production from the facilities, but allowed that provider ownership would be permitted if necessary for the economics of the project(s).

Ultimately, the city entered into a service contract with Solar Power and Light LLC in December 2011. The PPA contract defined a scope of service to include at least two, and possibly up to three MW, of distributed solar on sites located throughout the city, broken down into three phases. The first phase included five sites totaling 373 kW, comprised of a mix of ground-mounted, roof-mounted thin film, and roof-mounted crystalline PV arrays. Further sites to be considered in Phases II and III were left to be determined at a future date. These subsequent phases have now moved forward, and the city now has more than 20 completed or pending installations, totaling more than three MW.

The executed PPA contains a 20-year term and an initial power price of \$0.065/kWh. The pricing structure is such that the first two years of operation, the power price is set at a “promotional price” level (\$0.065/kWh), which increases to the normal fixed price of \$0.07/kWh in Year Three, and thereafter increases at a rate of

5.5% every five years thereafter. At the end of the term of the agreement, the contract may be renewed for an additional five years, with electricity purchases priced at 90% of the Year 20 price. In other words, the purchase price increases in Year Three, then again in Year Six, and again at five-year intervals in line with the 5.5% escalator, subject to a 10% decline in Year 21 if the contract is renewed. The PPA contains a performance guarantee of 95% of the expected annual output of the facility, adjusted to reflect a degradation rate of 0.8% annually. Despite the language in the initial RFQ, the city will not generally take ownership of the RECs generated by the facility, except that it will pay the PPA provider for RECs that the provider is unable to sell despite commercially reasonable efforts to do so.

6.2.2 City of Xenia, Ohio: Case Study

Request for Proposals: [City of Xenia Request for Proposals/Qualifications Solar Installation](#) (Issued: 10/10/2010; Due: 10/22/2010)

Executed PPA: [City of Xenia Power Purchase Agreement](#) (Approved: 10/20/2011)

Case Description: In 2010 the City of Xenia, Ohio issued a very basic RFQ/RFP seeking bidders to provide for the installation of solar arrays at two wastewater treatment plant sites and one municipal building. The request left many of the details of the ultimate arrangement up to the provider, providing that the installations could either be roof-mounted or ground-mounted, and allowing applicants to submit their own model site lease and PPA documents as part of the response package. A contractor was ultimately selected, but was unable to move forward with the project due to financing issues.

In July 2011, after hearing about a solar project in the nearby city of St. Mary's, the city renewed conversations on the possibility of a municipal solar project. Upon further conversations with different local solar provider, in October 2011 the City Council approved a measure allowing the City Manager to enter into a 20-year PPA with Solar Power and Light LLC. The executed PPA involves only the two sites at the city's wastewater treatment plants, totaling 625 kW (both 312.8 kW), and is expected to provide energy cost savings totaling \$317,000 over 20 years.

The executed PPA contains a 20-year term and an initial power price of \$0.080/kWh. The pricing structure is such that the rate remains the same for the first five years, and thereafter increases at a rate of 5.5% every five years. In other words, the price increases in Year 6, and then again at five-year intervals in line with the 5.5% escalator. The PPA contains a performance guarantee of 95% of the expected annual output of the facility, adjusted to reflect a degradation rate of 0.8% annually. The provider will retain ownership of the RECs generated by the facility, except that the city will pay the PPA provider for RECs that the provider is unable to sell despite commercially reasonable efforts to do so.

6.2.3 Monmouth County, New Jersey: Case Study

Request for Proposals: [Monmouth County Request for Proposals](#), [Monmouth County Request for Proposals Addendum 1](#) (Issued: 02/05/2010; Due: 03/16/2010)

Executed PPA: [Monmouth County Power Purchase Agreement](#) (Approved: 09/20/2010)

Case Description: In February 2010, Monmouth County, New Jersey issued an RFP requesting bids to provide 15-year solar PPAs on 5 county sites, expected to total 1.369 MW. The RFP itself was heavily detailed. Among other things, it included a large amount of detail on the specific sites in question; provided numerous detailed technical requirements; specified that REC ownership would rest with the provider; required a guarantee of energy savings and zero-cost to the county; and incorporated a model PPA that providers were not permitted to change in any substantive manner (as restricted by state law). Respondents

were required to submit bids for all five sites, with the understanding that the County could elect to remove sites from consideration at a future date.

Potential respondents submitted numerous requests for modifications to the PPA, most of which were not accepted. The County did grant modifications to a number of provisions that potential applicants believed were impractical, including: changes to panel warranty requirements to bring them in line with common industry warranty terms; revisions to maintenance bond requirements designed to make them more flexible; changes to the roof warranty requirements that do not require the PPA provider itself to warrant the roof(s); an addition to the PPA assigning the cost responsibility for system removal if a facility roof must be replaced; as well as various changes designed to align terms and conditions referenced in different portions of the PPA. In response to questions, the County further provided additional information to respondents describing site roof ages and warranty statements and permitted work hours at the different sites. A total of two proposals were received in response to the RFP.

In September 2010 the County adopted a resolution approving the execution of a single PPA for the suite of projects with Dobco, Inc., totaling five sites and 1.5 MW. While respondents were permitted to bid different contract prices for each of the five sites, as executed, the PPA employs the same prices and pricing methodology for each site. Each site has an initial contract price of \$0.085/kWh, with excess production above the guaranteed minimum production level at a discounted price of \$0.08/kWh. Both the contract price and the discount prices escalate at a rate of 2.75% annually for the 15-year duration of the agreement, reaching \$0.1243/kWh and \$0.1170/kWh respectively in final year of the contract. The minimum annual energy production level is set initially at roughly 1,941 MWh annually, and is reduced over time at 1% annually.

6.2.4 Town of Lee, Massachusetts: Case Study

Request for Proposals: [Request for Proposals Town of Lee and Town of Lenox](#) (Issued: 07/20/2011; Due: 08/26/2011)

Final Draft PPAs: [Town of Lee Draft PPA \(Landfill\)](#), [Town of Lee Draft PPA \(Recreation Area\)](#) (Final Draft Issued: 12/06/2013)

Case Description: In July 2011 the towns of Lee and Lenox, Massachusetts issued a joint RFP (utilizing an issuer's agent) for the installation of PV systems located at the wastewater treatment plants and landfills in each town, three schools located in the Town of Lee and two schools located in the Town of Lenox. The RFP was issued under a portion of state law (Chapter 25A) governing the procurement of energy conservation services, which are defined to include on-site electrical generation. In Massachusetts, a different procurement process (Chapter 30B governing leases or easements of municipal property) is sometimes used for landfill-based projects, though in this case the towns elected to issue a single RFP encompassing all of the proposed sites, including the landfills. The landfills and wastewater treatment plants were identified in the RFP as "primary" locations, while the schools were indicated as "secondary" locations.

The RFP requested bids for 20-year energy management service agreements (including both PPAs and leases) at both the primary and secondary sites, while also allowing respondents to suggest potential additional locations. Respondents were not required to provide bids for all of the sites. It was conducted as a two-phase process where respondents were required to submit a Non-Price Proposal outlining their respective capabilities and experience, and a separate Price Proposal containing pricing for each location and for each town as a whole. Proposals were evaluated first based on the Non-Price proposal to develop a short list of potential awardees, then on the basis of the Price Proposals. Price Proposals were evaluated according to two

factors: greatest financial return and avoidance of future price risk. The RFP contained a draft management energy services contract, but permitted respondents to make comments and suggested edits as part of their proposals. Other notable aspects of the RFP is that it included a requirement that respondents submit a plan for the disposition of RECs associated with the project, including the allocation of financial impacts caused by a change in law, and the incorporation of renewable energy education and curriculum development into the evaluation criteria.

Ultimately, four responses were submitted to the RFP and two of these were shortlisted. After further consideration and re-ranking of the proposals (including both the Non-Price and Price elements), the towns selected Broadway Electrical as the provider. The issuer's agent then performed an analysis of possible ownership options. The towns settled on third-party ownership as the most attractive option, and a private law firm was hired to negotiate the commercial and legal aspects of the arrangements.

In December 2013 the towns finalized separate (though virtually identical) final draft contracts for facilities located on at the landfill, wastewater treatment plant, and an additional tract of land in the Town of Lee, and the Town of Lenox's wastewater treatment plant. A second phase was slated to include the Town of Lenox's landfill pending additional environmental studies. However, all of the projects have now been put on hold because the provider, Broadway Electrical, has ceased operations. The towns sought other providers to take over the projects during the spring of 2014, but as of this writing have been unable to reach an agreement with a new developer.

For the Town of Lee, had the projects gone forward, the collective sites were slated to host a total of roughly 2.25 MW. The PPAs provide for an initial electricity purchase price of \$0.06795/kWh, and incorporate a price escalation of 2.519% annually over the 20-year duration of the contract, reaching a price of \$0.10901 in the final year of the contract. Notably, the agreement also contains provisions related to the payment of property taxes on the project, where the provider would make a payment in lieu of taxes (PILOT) to the town that is then incorporated into the PPA pricing. This "tax price" would have been responsible for 10 – 15% of the overall \$/kWh electricity price to the town, but varies by year independently of the energy price. The PPAs also contain an electricity production estimate, and a guaranteed electricity production level set at 80% of the estimate. For the collective facilities, the estimated energy production totals 2,668 MWh during the first year of the agreement, and declines by 0.5% annually (resulting in a concomitant decline in the guaranteed production level).

6.2.5 City of San Jose, California: Case Study

Request for Information Memo: [San Jose Request for Information Memo](#) (Issued: July 3, 2009)

Request for Proposals: [San Jose Request for Proposals](#), [San Jose Request for Proposals Addendum-1](#) (Issued: 06/25/2010; Due: 08/16/2010)

Executed PPA: [SolarCity Solar Power Purchase Agreement \(City of San Jose California\)](#) (Approved: 09/27/2011)

Case Description: The City of San Jose endured a fairly rocky path towards procuring solar on municipal buildings via a retail PPA. In April 2008 the city issued an RFP for a 1 MW facility to be located at the municipal airport. The responses to the RFP were unattractive (three times what the city was paying for electricity), and feedback from the respondents indicated a number of contributing factors to the high bids, including site access restrictions, bonding requirements, indemnification language, and a non-appropriations clause based on state constitutional debt limitations. A second RFP with some limited modifications failed to receive adequate responses from developers. In response, the city issued a Request for Information (RFI) in

July 2009 for the purpose of establishing a dialog with the provider community. The resulting report on the RFI indicated that providers had continued concerns over elements relating to the non-appropriations clause, termination fees, and one-sided indemnification language.

Building upon the information gleaned from the RFI, the city issued yet another RFP in September 2009. This RFP was based on a revised procurement methodology that focused on provider qualifications, allowing the city to select a superior service provider, and then negotiate the terms of the PPA in a manner that could satisfy both parties. This RFP was ultimately successful, resulting in the execution of a [PPA for a single 1.3 MW project with SunEdison](#). The successful RFP was then used as a template for a further RFP issued in June 2010, seeking a provider for 38 sites totaling 13.9 MW. The sites were grouped into three categories, one for sites with a potential for 500 kW or more generation (seven sites totaling 6.2 MW); another for sites with less than 500 kW of generating potential (25 sites totaling 5.5 MW); and a final group of sites for which long-term PPAs were not possible (six sites totaling 2.1 MW).

As indicated above, the June 2010 RFP utilized a multi-step procurement process. The first phase was designed to provide the city with short-list of highly qualified providers. It utilized a set of scoring criteria that was heavily weighted towards experience (50%) and technical conceptual proposals (30%) for a subset of representative sites in each group. The RFP identified enhanced minimum qualifications for Group One (large sites) bidders, but allowed respondents to submit bids for only one or two site groups, rather than requiring a submission for all three. Respondents were permitted to propose alternative financing options at their discretion, but were required to provide \$/kWh pricing for each year regardless of the structure used. Where applicable, example PPAs and leases had to be submitted with the proposals.

In the second phase of the process, short-listed bidders were permitted to participate in a “best and final offer” evaluation process for each group that was heavily weighted towards costs (75%). Scores from the first phase were disregarded during Phase Two. This phase allowed participants additional opportunities to obtain site information sufficient to submit a firm price proposal for representative sample sites. Those selected could then enter negotiations with the city on further terms of the contract.

In May 2011 SolarCity was selected as the leading provider, and in September 2011 the city approved a resolution approving the execution of PPAs (one for each site) at 28 sites totaling roughly 4 MW, involving a combination of rooftop and carport systems (two sites were eventually dropped after further review). The resolution required individual PPAs to be executed by December 31, 2012 using the same form PPA. The PPAs are structured with 20-year terms and two additional five-year extension options. PPA prices are specific to each site, initially ranging from \$0.176 - \$0.26/kWh with blanket 3.9% annual escalator. The prices assumed that none of the facilities would benefit from California Solar Initiative (CSI) incentives (which was only accepting wait-list applications during this time frame), but were designed to be adjusted on a pro-rata basis to reflect any incentive received through the CSI.

There are two particularly notable elements to the San Jose PPA that distinguish it from many of the others reviewed for this Toolkit. First, the contract does not contain any minimum or guaranteed energy production level. Second, the non-appropriation clause concerns were addressed by classifying non-appropriation as a *force majeure* event, excusing the provider from its obligation to provide power to the city and allowing it to terminate the PPA if the event continues for 180 days (though without a termination fee).

A further resolution adopted in September 2011 authorized the City Manager to execute PPAs with the provider for additional sites by June 30, 2013. By March 2013, eight additional sites had been identified as potential candidates for solar installations. In April 2013 the city chose to extend the authorization for the City Manager to execute additional PPAs by one year, to June 30, 2014, rather than issue a new RFP for the outstanding sites.

6.2.6 Boulder Valley School District, Colorado: Case Study

Request for Proposals: [Boulder Valley School District Request for Proposals](#) (Issued: 04/11/2011; Due: 05/05/2011), [Boulder Valley School District Request for Proposals Q&A](#)

Executed PPA: [Boulder Valley School District Approval Memo & PPA](#) (Approved: 06/28/2011)

Case Description: In April 2011 the Boulder Valley School District issued an RFP seeking the installation of rooftop solar PV systems on 10 – 17 separate sites, with individual systems expected to range from 20 – 101 kW each, and totaling roughly one MW. The RFP specifically requested proposals to provide the systems under a 20-year PPA arrangement as opposed to other potential financing options. Providers were permitted to offer additional value added products beyond those spelled out in the RFP as separately priced add-ons.

The RFP essentially used a single-phase process where the respondent was required to provide site plans and a best and final pricing offer as part of its proposal for each of the sites. A quasi-second stage involving interviews with “finalists” was described in the RFP, but not as a definitive step in a phased process. The RFP included a model PPA and site license agreement, but permitted providers to make suggestions for limited changes to both as part of their proposals. A request by one respondent to modify the non-appropriation clause in the model PPA was met with a response that the provision was required by the state Constitution, and that while the district was open to considering alternative language, the specific language had been used successfully by other school districts in the state.

The RFP further included a moderate number of technical and qualification specifications, including the use of a non-penetrating roof mounting system; a system degradation rate not to exceed 0.75% annually; the development of a student/staff educational plan; and a requirement that the provider have a proven record of developing projects of a similar nature under the Solar*Rewards incentive program offered by Xcel Energy (the local utility). Notably, the District expressly indicated that roof replacements might be necessary during the term of the agreement, and directed respondents to design their proposals with that expectation in mind.

In June 2011 SolarCity was selected as the PPA provider for 14 sites totaling 1.4 MW. The District was initially presented with two options for the PPA, one including roughly 1 MW on 10 schools at an electricity rate similar to the current electricity rates paid by the district, and another with an additional 0.6 MW on sites at an initial rate that was slightly higher than the current electricity rate. It elected to pursue the second option (though ultimately only 14 schools were selected) with an expectation that the initial annual cost increase (\$14,000) would decrease over time as grid electric rates increased.

Separate PPAs were executed for each of the individual sites (the example PPA above is for the Aspen Creek School site), though the terms and conditions of each are identical. A minor change was made to the non-appropriation language of the PPA (as compared to the model) providing that non-appropriation would affect only the purchaser’s obligation to pay for energy delivered, without affecting any of other obligations of the purchaser under the agreement. The initial PPA rate for the Aspen Creek school site was set at \$0.055/kWh, with an annual escalator of 2.5%, resulting in a power price of \$0.0879/kWh during the final year of the contract. In contrast to some other PPAs, the annual escalator is compounded annually, resulting in higher

increases in later years than earlier years. In other words, the annual escalation is calculated according to the prior year's power price, rather than the initial power price.

6.2.7 Montgomery County, Maryland: Case Study

Request for Proposals: [Montgomery County Request for Proposals](#) (Issued: 01/24/2014; Due: 03/14/2014)

Executed PPA: Not available

Case Description: In January 2014 Montgomery County issued an RFP initially seeking solar PPA proposals for a total of 17 sites, with multiple potential configurations (i.e., rooftop, parking canopy, or ground-mount) identified for each site. These 17 sites were identified as Phase I of the project, with the potential addition of further sites in Phase II using the same provider. The RFP indicated that the County would work with the selected provider to identify suitable Phase II sites from a master list of county-owned sites concurrent with Phase I development activities.

The RFP utilized a partially-phased process (not to be confused with the separate project site phases) where Phase I was devoted to selecting a short-list of providers based primarily on pricing and provider qualifications/experience, and Phase II was confined to oral presentations and responses to follow-up questions. Any provider that scored at 70 out of a possible 100 points in Phase I was invited to participate in Phase II. Providers were permitted a fair amount of flexibility in designing their bids, in that they were not required to bid on all sites and were allowed to submit different prices and contract length bids for each individual facility. However, the County did include elements to incent providers to submit bids for all sites, stating that complete bidding was encouraged, sites bid by one provider and not another might be bundled together, and using overall volume (MW) as a scoring metric (albeit with minor weighting) in the Phase I evaluation. Further, the County expressly limited annual pricing escalations to 2% (and 0% in 2015 and 2016), and the pricing evaluation included points for offering discounted pricing on a capacity award of more than one MW.

One of the more unique elements of this RFP in comparison to the other RFPs reviewed for this Toolkit was that respondents were permitted to separately submit bid (as a \$/kWh pricing adder) to provide REC replacement, electric vehicle ready parking spaces, LED canopy lighting, and battery back-up service as premium services. While these premium options did not figure significantly into the evaluation system (comprising 3 out of 100 points), their inclusion and the accompanying RFP design point to options that other local governments may wish to consider as part of a solar PPA RFP.

The County ultimately selected four providers for Phase II of the process, and finally approved the selection of SolarCity as the provider in July 2014. As of this writing, the associated executed agreements were not available.

6.2.8 Town of Glastonbury, Connecticut: Case Study

Request for Proposals: [Town of Glastonbury Request for Proposals Addendum 1](#) (Issued: 10/12/2011; Due: 11/18/2011)

Executed PPA: [Glastonbury Power Purchase Agreement](#) (Initially Approved: June 2012; subsequent approvals for additional facilities were issued at later dates, the example executed PPA here for one project is dated 10/29/2013)

Case Description: In October 2011 the Town of Glastonbury issued an RFP for solar PPAs on three sites, the wastewater treatment plant, the Town Hall, and the vehicle maintenance garage. The Town used a consultant, Celtic Energy, to assist with the development of the RFP and evaluation of proposals. While the

RFP itself suggested that only PPA proposals would be considered, a subsequent addendum indicated that respondents could propose alternative structures that might provide added value to the town. It utilized a Model PPA developed by the Connecticut Clean Energy Finance and Investment Authority (CCEFIA), but allowed providers to propose changes to the model. While the RFP was confined to requesting bids for only three facilities, it included a solar assessment survey for several other sites. Respondents were expected to submit detailed plans and bids for each site, but were not required to abide by any specific formulas or limitations in designing their pricing proposals.

The RFP was conducted primarily using a single-phase process, though it did provide for the establishment of a short-list of providers for follow-up interviews. The proposal evaluation protocol was described only very generally, with a stated intent of entering an agreement in the best interest of the town. The town ultimately selected SolarCity as the provider for two of these locations, the Town Hall and the vehicle maintenance garage. It also elected to use the same provider for later installations on other sites, including the high school, the bus yard, and several other local schools. While information was not available for all of these projects, it was reported that the high school (247 KW) and the bus yard projects will operate under PPAs priced at \$0.06/kWh with a 2% annual escalator for 20 years. The example executed PPA included above for the Smith Middle School project (258 kW) is priced at a flat rate of \$0.055/kWh for an initial term of 20 years. Collectively, the installations are expected to save the Town over \$100,000 a year in electricity costs.

6.2.9 Tucson Unified School District, Arizona: Case Study

Request for Proposals: [Tucson Unified School District Request for Proposals](#) (Issued: 03/01/2013; Due: 04/18/2013)

Executed PPA: [Tucson Unified School District Power Purchase Agreement and Memo of Easement](#) (Approved: 06/11/2013)

Case Description: In March 2013 the Tucson Unified School District issued an RFP requesting PPA proposals with a maximum term of 20 years. The RFP requested initial, detailed proposals for a total of 20 sites (Phase I) and a general technical plan for 65 remaining sites within the District (Phase II). The RFP was designed such that after the completion of Phase I, the District would be permitted to extend the scope of the agreement to encompass the potential additional sites in one-year increments for up to five years. The selected provider was required to respond promptly with specific site plans upon notice from the District that a new site or sites had been identified. A model PPA was not provided with the RFP; respondents were directed to submit their own agreements with the understanding that the District might wish to negotiate final terms.

Given identified issues with rooftop obstructions, the RFP indicated that while rooftop systems might be considered, they were discouraged in favor of other configuration options (e.g., ground-mounted shade structures). The District also expressed interest in providing additional vacant land for the development of a further solar project, and allowed providers to submit proposals for doing so at their option. Respondents were required to submit a bid with firm pricing for each site, with a guaranteed minimum output, but were otherwise permitted to design their pricing proposals as they chose.

The RFP was conducted under a two-phase process where initial proposals were used to develop a short-list for the second Phase. Phase II involved a rescoring of short-listed providers based on both their initial proposals and their responses to follow-up requests from the evaluation committee. While firm pricing was requested as part of the initial proposal phase, the District indicated that during Phase II of the process, it reserved the right to request best and final offers from short-listed vendors.

A total of five proposals were received, and two vendors were short-listed for Phase II. In June 2013 the District ultimately selected Natural Power and Energy as the project developer for 43 initial sites totaling roughly 11 MW. Constellation New Energy provides the financing for the arrangement. The provider offered two pricing options in its proposal, one with lower initial price (\$0.1082/kWh) and a 2% annual escalator, and one with a higher initial price (\$0.1218/kWh) and no escalator. The District elected the non-escalator option, and projects to save from \$11 - \$20 million in energy cost over the 20-year life of the contracts depending on the level of utility rate increases. Notably, the systems will not receive an incentive from the incumbent utility (Tucson Electric Power), and as a consequence the District will retain ownership of the RECs produced by the system. Construction of the individual facilities will take place throughout 2014 and 2015 in groups of six – eight sites each. The first installation began construction in February 2014 and was completed in May. Subsequent phases are now underway.

6.2.10 Washington D.C.: Case Study

Request for Proposals: [Washington D.C. Request for Proposals](#) (Issued: 03/25/2014; Due: 05/30/2014)

Executed PPA: N/A

Case Description: After successfully pursuing a solar PPA arrangement at one local school during 2013 (Dunbar High School), in March 2014 the District issued an RFP for a much larger suite of sites. The 2014 RFP sought solar 20-year PPA proposals for 50 sites expected to total roughly 10.4 MW of generation. The RFP broke the overall site list into three bundles: a “small” category (150 kW or less) comprised of 16 sites expected to support up to 1.5 MW of generation in total; a “large” bundle comprised of 29 sites expected to support up to 7.6 MW of generation in total; and an “innovation” bundle comprised of 4 sites expected to support up to 1.2 MW of generation. The “innovation” bundle contains sites that are currently under construction or in the process of being renovated, and for which non-PPA financing options may be considered.

The District provided fairly detailed preliminary solar site assessment information with the RFP, based on a prior commissioned consultant study. Providers were permitted to bid on each individual project bundle at their discretion, but were required to bid on each project within a bundle. The large project bundle also required respondents to incorporate a mentoring program providing for small and local businesses to perform all of the work at some portion of the large bundle sites, with a commitment that mentoring extend for at least the first five years of the PPA. Vendors were given more or less full discretion with respect to pricing, with the exception that they were required to submit separate prices for seller vs. host ownership of SRECs.

The RFP did not include a model PPA; each provider was required to submit a form PPA as part of their proposal. However, the District did advise respondents of several non-negotiable elements of any ultimate agreement, including that it must contain a non-appropriations clause, may not require the District to indemnify any other party, and must provide liquidated damages for violations of the agreed upon commercial operations schedule.

The solicitation used a two-phase process, where the first phase was devoted to selecting a short-list of three providers, and the second phase was devoted to making a final selection based on the submission of more detailed information for each site. The scoring for the first phase used a fairly even weighting among the different evaluation categories, such that no single category dominated the others. The Phase I technical proposal required the use of PVWatts and a standard AC-derating factor, subject to refinement using other software in Phase II. As of this writing, the authors are not aware of the outcome of this RFP.

7 Clean Model PPA Template

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

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

BY AND BETWEEN

[_____],

AS SYSTEM OWNER

AND

[_____],

AS HOST CUSTOMER

AS OF

_____, 20__

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Exhibit A	Description of the Premises
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Exhibit C	Early Termination Fee
Exhibit D	Solar Electricity Price Schedule
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Exhibit F	Solar Energy Facility Site Lease Agreement

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 [redacted] (the “**Effective Date**”), by and between [Seller], a [State] [corporation / limited liability company] (“**System Owner**”), and [redacted], 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 a negotiated agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either 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.

“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.

“Environmental 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: (a) production, energy, or investment tax credits associated with the development, construction, ownership, or operation of the System, accelerated depreciation, and other financial incentives in the form of credits, reductions, or allowances associated with the System or the Green Attributes that may be applied to reduce any state or federal income taxation obligation, including Tax Benefits, (b) performance-based incentives under applicable state or federal law or utility programs, including without limitation any feed-in tariffs that are in effect or may come into effect in the future; and (c) all other rights, credits, rebates, benefits, and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the System or the Output or otherwise from the development, installation, or ownership of the System or the production, sale, purchase, consumption or use of the Output. Without limiting the foregoing, Environmental Financial Incentives includes (a) the right to apply for (and entitlement to receive) incentives under any demand-side management, distributed generation, or energy efficiency programs offered by a utility company, a third-party provider, or the state in which the System is located; (b) any incentive offered pursuant to a renewable energy program, or any other incentive programs offered by or in the state in which the System is located; and (c) the right to claim federal income tax credits under Sections 45 or 48 of the Internal Revenue Code, or any state tax law or income tax deductions, with respect to the System under the Internal Revenue Code or any state tax law. Environmental 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, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides, nitrogen oxides, carbon monoxide and other pollutants, (b) any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere and (c) the Reporting Rights to these avoided emissions. Green Attributes do not include Environmental 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.

“Meter” means standard revenue quality 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 all waivers, approvals, franchises, variances, permits, authorizations, licenses or orders of or from any 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 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 Host Utility pursuant to Interconnection and Net Metering Agreements. 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.

In no event shall Host Customer sell, or be deemed to have sold, Output to any Person, except that excess Output beyond Host Customer's immediate needs may be delivered to a Host Utility pursuant to an 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 (other than taxes imposed on Host Customer after the date of this Agreement or with respect to any sales, use, excise, or similar tax imposed as a result of the sale of Electricity), 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. System Owner has the right to challenge the lawfulness of any tax or assessment associated with the construction, operation, or maintenance of the System Assets on the Premises imposed on System Owner, or that are attributable to Host Customer for which System Owner is required to pay (including the right to obtain an exemption from such tax or assessment), Host Customer agrees to cooperate with System Owner to enable System Owner to challenge the lawfulness of any such tax or assessment or to qualify for an exemption from any such tax or assessment. System Owner will notify Host Customer of any such challenge by System Owner, and further, shall periodically inform Host Customer of all developments in connection with such challenge, including copies of any pleadings or other documents comprising the docket of any such challenge. Notwithstanding this Section 4.6, to the extent that System Owner is required to collect or may collect from Host Customer any sales, use, excise, or similar tax imposed as a result of the sale of Electricity, or as a result of the System being purchased by Host Customer, Host Customer will promptly pay such amount to System Owner to be remitted to the tax authority unless Host Customer provides System Owner with a completed exemption certificate stating the reason that it is not required to pay such taxes.

**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) If applicable, System Owner shall have entered into contract(s) with Subcontractors for installation of the System.
- (c) Receipt by Host Customer of [IDENTIFY ANY OTHER DOCUMENTATION NEEDED BY CUSTOMER BEFORE COMMENCEMENT OF CONSTRUCTION].

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), each Party may terminate this Agreement without triggering the default provisions of this Agreement upon thirty (30) 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 time 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 county 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 arising by, under or through Host Customer. Host Customer shall indemnify System Owner against all losses, claims, costs and expenses (including attorneys' fees) incurred by System Owner in discharging and releasing any such lien, encumbrance, pledge, levy or attachment arising by, under or through Host Customer.

Section 7.2 System Owner Is Exclusive Owner of Environmental Financial Incentives [and Green Attributes].

Host Customer agrees that System Owner is the exclusive owner of all Environmental Financial Incentives [and Green Attributes] attributable to the System. Host Customer hereby assigns its interest (if any) in all such credits, attributes and other financial incentives 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].

Section 7.3 Ownership of Deposits.

System Owner shall retain all right and ownership to any deposit made by System Owner to reserve for the System, or ensure the System's participation in, any Environmental Financial Incentive, and Host Customer shall transfer, assign or pay to System Owner any amount of such deposit made by System Owner but refunded to Host Customer by the Host Utility or other such applicable agency or program.

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, 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. Delays in the issuance of any such invoice will not constitute any waiver of Host Customer's obligation to pay, or System Owner's right to collect, any payment by System Owner under any such invoice.

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. Late payments on any undisputed invoiced amounts will accrue interest at a rate of 1.5% per month (18% per annum), or the maximum rate allowed by law.

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 by not more than plus or minus 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 by not more than plus or minus 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.

Host Customer acknowledges and understands that solar power is an intermittent resource and that the Output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of Output is guaranteed in amount or time of delivery. Host Customer further acknowledges that it must retain a primary source of power from Host Utility.

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, ordinary wear and tear excepted, 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.

Section 11.2.2 Ownership and Control over Premises. Host Customer owns the Premises [subject to _____/ [free and clear of all liens, deeds of trust, mortgages, or other encumbrances except those of record as of the Effective Date].

Section 11.2.3 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, and, Host Customer has complied with all laws and regulations relating to bidding or procurement of the Output hereunder.

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, the purchase of the Output, and the maintenance of any Interconnection and Net Metering Agreements. Host Customer shall provide System Owner with reasonable assistance in, and shall bear all reasonable expenses associated with, obtaining and maintaining such Permits, approvals, and other authorizations. Where allowed by law, Host Customer shall designate System Owner as its agent in obtaining all Permits, approvals and additional authorizations. All Permits obtained shall be owned and controlled by System Owner. To the extent that any such Permits must be obtained or owned by Host Customer, Host Customer agrees that it will work cooperatively with System Owner in connection with satisfaction and compliance with such Permits.

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, other electric service provider 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 thirty (30) 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, or (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.

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 five (5) 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 misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within sixty (60) 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 sixty (60) 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 one hundred twenty (120) 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 Host Customer'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 Continued Operation of System. 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 may, in its sole discretion and without limiting any rights or remedies available to System Owner under this Agreement, continue the Site Lease Agreement in full force and effect and sell any and all Output from the System to the Host Utility or any other purchaser allowed under applicable law.

Section 13.5 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 13.6 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 or shall agree to obtain an Independent Appraisal pursuant to Section 15.5 to determine the Purchase Price.

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 twenty (20) 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 obtained and Host Customer does not exercise its Purchase Option, then Host Customer shall be responsible for payment of the costs and expenses associated with obtaining the Independent Appraisal. If Host Customer exercises its Purchase Option, 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 Host Customer. Host Customer agrees to pay System Owner for the reasonable costs and expenses directly relating to the breach of any representation, warranty, or covenant of Host Customer

hereunder. Host Customer further agrees to pay for the reasonable costs and expenses of any repairs to or loss of the System, to the extent resulting from negligence or intentional misconduct of Host Customer or any of its contractors, agents, tenants, employees, partners, affiliates or invitees, or the failure of Host Customer to reasonably protect the System from trespass or other unauthorized access as provided herein.

Section 16.1.2 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 Mutual General Indemnity.

Each Party (the "**Indemnifying Party**") shall defend, indemnify, and hold harmless the other Party and the directors, officers, shareholders, partners, agents and employees of such other Party, and the affiliates of the same (collectively, the "**Indemnified Parties**"), 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 Indemnifying Party, including, with respect to Host Customer as the Indemnifying Party, for any claim or liability resulting from any trespass or other access to the System not authorized in this Agreement, except to the extent caused by the Indemnified Parties or any one of them.

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 PLUS THE VALUE OF ALL ENVIRONMENTAL FINANCIAL INCENTIVES AND THE SALE OF GREEN ATTRIBUTES. OTHER THAN FOR LIQUIDATED DAMAGES OR 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 NON-PERFORMANCE 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.

Each Party 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 injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party shall name and endorse the other Party 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 and Host Customer's property insurance shall cover the Premises and Site upon which the System is located. 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 17.2.3 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 17.2.4 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 17.2.5 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.

Section 17.3 Use of Insurance Proceeds.

Unless Host Customer and the System Owner agree otherwise, in the event of any loss or liability related to the System Assets, System Owner agrees to promptly restore the System Assets to the condition prior to such loss, and System Owner will use the proceeds received by or on behalf of Host Customer (Host Customer agreeing to make such proceeds available) or System Owner, in either case from any policy of insurance providing coverage for such loss to make all necessary repairs or replacements to the Projects and to promptly restore deliveries of Electricity to Host Customer.

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 fee title to

the Premises, 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 (6th) 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 laws of the state of _____.

Section 20.1.2 Jurisdiction. Subject to Section 20.1.4 below, the Parties hereby consent and submit to the personal jurisdiction of the [federal or] state court located in _____ [County], _____ [State].

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 senior executive with authority to resolve the Dispute. If the senior executives 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 or pursuant to an action at law or in equity. 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 department:

[_____]
[_____]
[_____]
Title: [_____]

If to **HOST CUSTOMER:**

[_____]
[_____]
[_____]
Title: [_____]

With a copy to Host Customer’s legal department:

[_____]
[_____]
[_____]
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 is 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, nondisturbance 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 acknowledges 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 (other than any Lender) 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:

Column 1

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	

Column 2

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)

6 th Anniversary	
7 th Anniversary	
8 th Anniversary	
9 th Anniversary	
10 th Anniversary	
11 th Anniversary	
12 th Anniversary	
13 th Anniversary	
14 th Anniversary	
15 th Anniversary	
16 th Anniversary	
17 th Anniversary	
18 th Anniversary	
19 th Anniversary	
20 th 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)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

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]

8 Clean Model Site Easement Template

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

SOLAR ENERGY FACILITY SITE ACCESS AND USE EASEMENT AGREEMENT (_____ Project)

This **SOLAR ENERGY FACILITY SITE ACCESS AND USE EASEMENT AGREEMENT** (this “**Agreement**”) is made as of _____, 201_ (the “**Effective Date**”) by and between _____, whose address is _____ (“**Grantor**”), and _____, a _____, whose address is _____ (“**Grantee**”). Grantee and Grantor are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Grantor is the owner of certain real property located at _____, _____ County, _____ (the “**State**”), together with certain improvements, buildings, and other structures consisting of [_____], as more particularly described on the attached Exhibit A and incorporated herein by this reference (the “**Premises**”).

B. Grantee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for the delivery of electrical energy to be installed, maintained, operated, and used on the Premises.

C. Grantor and Grantee are parties to that certain Solar Energy Power Purchase and Sale Agreement dated of even date herewith (the “**Solar PPA**”), pursuant to which Grantee (as System Owner) has agreed to sell to Grantor (as Host Customer), and Grantor has agreed to purchase from Grantee, all of the electrical energy produced by a solar photovoltaic electric generation system (as further defined in the Solar PPA, the “**System**”) to be installed and operated by Grantee on a portion of the Premises.

D. In furtherance of the Solar PPA, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement for purposes of (i) constructing, installing, owning, operating, maintaining, repairing, and removing the System on a portion of the Premises, (ii) transmitting electrical energy to, on, over,

and across the Premises, and (iii) ingress to and egress from the Premises for the installation, operation, maintenance, repair, and removal of the System.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Grantor and Grantee hereby agree as follows:

AGREEMENT

1. Grant of Easement and Laydown Area License.

1.1 Access and Use Easement. Grantor hereby grants to Grantee a nonexclusive easement (the “**Easement**”) on, over, and across the Premises, including the roof of the Premises and other areas in and around the Premises identified and depicted on the attached Exhibit A-1 and incorporated herein by this reference (collectively, the “**Site**”) for solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to (a) locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on and from the Premises; (b) making such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises, in accordance with Grantee’s plans and design pre-approved by Grantor, as set forth in the Solar PPA; (c) temporary vehicle parking; (d) access (including but not limited to access for lifting, rigging, and material-handling equipment); and (e) ingress to and egress from the System on, over, and across the Site during the Term (as defined in Section 2) (collectively, “**Operations**”).

1.2 License for Temporary Construction Laydown Area. Grantor hereby grants to Grantee a license to use that portion of the Premises depicted on the attached Exhibit C and incorporated herein by this reference, for the assemblage of materials to construct, erect, and install the System (the “**Laydown Area**”). Upon completion of construction and installation of the System, Grantee will remove all materials and equipment from the Laydown Area and will restore the Laydown Area to substantially the same condition in which it existed immediately prior to Grantee’s use.

2. Term; Termination; Cross Default.

2.1 Term. The Easement and rights granted to Grantee hereunder commence on the Effective Date and shall continue for a period of _____ (____) years[, which term may be extended for up to two consecutive periods of five (5) years each], as described in the Solar PPA (collectively, the “**Term**”); *provided however*, Grantee’s right of access shall continue in full force and effect for a period of _____ (____) days following the expiration or earlier termination of this Agreement and the Solar PPA for purposes of removing the System (save and except for termination following Grantor’s exercise of its purchase option, as set forth in the Solar PPA).

2.2 Termination. [Without limiting the generality of Section 2.1, if construction of the System does not commence within one (1) year of the Effective Date, this Agreement shall terminate by its terms and shall be of no further force or effect, unless otherwise agreed in writing by the Parties.] Upon the expiration or earlier termination of the Solar PPA, Grantee shall surrender to Grantor all of Grantee’s right, title, and interest

in and to the Premises by executing and recording in the real property records of _____ County, _____, an instrument evidencing the termination of this Agreement and the Easement.

2.3 No Cross Default. No event of default by Grantee, as System Owner, or Grantor, as Host Customer, pursuant to the Solar PPA shall constitute a default under this Agreement. Any amendment, modification, expiration, or termination of the Solar PPA shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties. Notwithstanding the foregoing or anything in this Agreement to the contrary, each of Grantor and Grantee has the right to terminate this Agreement if the Solar PPA terminates as a result of a default by either Party thereunder.

3. Design and Construction of System; Acknowledgment of Grantor. Grantee shall install and construct the System in accordance with the Solar PPA. Grantor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, or to the ground or a combination thereof.

4. Maintenance of the Premises; Security.

4.1 Maintenance. During the Term, Grantee shall, at Grantee's sole cost and expense, maintain the System and the Site in accordance with all laws, rules, ordinances, orders, and regulations of all applicable local, state, and federal governmental authorities.

4.2 Clean Condition. Grantee shall not unreasonably clutter the Premises and shall collect and dispose of any and all of Grantee's refuse and trash.

4.3 Security. Grantee shall provide all security measures that Grantee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations.

5. Grantor's Representations and Warranties.

5.1 Authority; No Third-Party Rights. Grantor represents and warrants to Grantee that there are no circumstances known to Grantor and no commitments to third parties that may damage, impair, or otherwise adversely affect Grantee's rights hereunder, the System, or the performance of the System by blocking sunlight to the System. Grantor and each person signing this Agreement on behalf of Grantor has the full and unrestricted right and authority to execute this Agreement and to grant to Grantee the Easement and other rights granted hereunder. When signed by Grantor, this Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms.

5.2 No Interference. Grantor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight. Grantor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Grantee of its rights granted under this Agreement;

(ii) take any action that will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Grantee's access to the Premises for the purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Grantee's access to any portion of the System.

5.3 System Property of Grantee; Transfer of the Premises. Grantor acknowledges and agrees that Grantee is the exclusive owner and operator of the System, no portion or component of the System is a fixture, the System may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered with the conveyance of any fee or leasehold interest in or to any portion of the Premises (any such conveyance, a "**Transfer**"), and Grantee has the right to file in the central and county records in which the Premises is located financing statements evidencing Grantee's title to the System. Grantor shall notify Grantee in writing no fewer than fourteen (14) days before any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer. This Agreement and the Easement and rights granted herein shall survive any Transfer.

5.4 Title Review and Cooperation. Grantor shall cooperate with Grantee to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Grantor's fee title to the Premises to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Grantee under this Agreement. If Grantee and Grantor are unable to obtain such agreements from any third party holding an interest in the Premises, Grantee and any assignee of Grantee shall be entitled (but not obligated) to make payments in fulfillment of Grantor's obligations to such third party and may offset the amount of such payments from amounts due Grantor under this Agreement. Grantor shall also provide Grantee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Grantee.

6. Insurance. At all times during the term of this Agreement, Grantee and Grantor shall, at its own respective cost and expense, obtain and maintain in effect the insurance policies and limits set forth in the Solar PPA.

7. Liability; Indemnity. The Parties' respective indemnification rights, duties, and obligations as set forth in the Solar PPA shall apply without limitation to this Agreement.

8. NO CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER GRANTEE NOR GRANTOR SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT. THE FOREGOING PROVISION SHALL NOT PROHIBIT GRANTEE OR GRANTOR FROM SEEKING AND OBTAINING GENERAL CONTRACT DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS AGREEMENT.

9. Hazardous Materials.

9.1 Grantor shall not violate, and shall indemnify Grantee for, from, and against, any claims, costs, damages, fees, or penalties arising from a violation (past, present, or future) by Grantor or Grantor's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation,

manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, State, or local laws or regulations (“**Hazardous Material**”) on or under the Premises.

9.2 Grantee shall not violate, and shall indemnify Grantor against, any claims, costs, damages, fees, or penalties arising from a violation by Grantee or Grantee’s agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

10. Assignment; Successors and Assigns; Agreement to Run With Premises. This Agreement and the Easement granted herein may be assigned by Grantee only in accordance with [Section ___ of] the Solar PPA. This Agreement and the Easement granted herein shall run with the Premises and survive any transfer or conveyance of the Premises. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties hereto. Grantee has the right to assign this Agreement, the Easement and other rights granted to Grantee hereunder to any assignee of Grantee under the Solar PPA.

11. Rights of Lenders. Grantee has the right to collaterally assign its rights and interests under this Agreement to any Lender (as defined in the Solar PPA) under the Solar PPA. The rights of any such Lender, as set out in the Solar PPA and including but not limited to, the right to notice and cure of any default by Grantee, shall apply without limitation to this Agreement and the Easement.

12. Notice and Notices.

12.1 Notice. Except as may be required by an emergency, following construction and installation of the System, Grantee will give Grantor reasonable written or telephonic notice before any entry onto the Premises by Grantee’s employees, agents, or contractors. In the event of Grantee’s entry due to an emergency, Grantee will promptly notify Grantor of its entry and the nature of the emergency.

12.2 Addresses for the Delivery of Notices. Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may also be sent by fax transmission [or email] provided that such transmission includes delivery confirmation [or read-receipt confirmation, as applicable]:

Notice to Grantor:

Facsimile No.: _____

Attn: _____

Tel. _____

Notice to Grantee:

Facsimile No.: _____

Attn: _____

Tel. _____

With a copy to:

Facsimile No.: _____

Attn: _____

Tel. _____

With a copy to:

Facsimile No.: _____

Attn: _____

Tel. _____

12.3 Change of Recipient or Address. Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual Person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

13. Miscellaneous.

13.1 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 13.1.

13.2 No Partnership or Sale. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller of electrical energy, or any other association between Grantor and Grantee, other than the relationship of grantor and grantee.

13.3 Severability. If any court or regulatory agency of competent jurisdiction holds that any provision of this Agreement is unenforceable or invalid, then Grantor and Grantee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

13.4 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

13.5 Recordation. Grantee may, at its sole cost and expense, record this Agreement in the real property records of _____ County, _____.

13.6 Amendments. This Agreement may be amended only in writing signed by Grantee and Grantor, or their respective successors in interest.

13.7 Dispute Resolution. In the event of any dispute arising under this Agreement or the Easement, the dispute resolution provisions of the Solar PPA shall govern the resolution of any such dispute.

13.8 Governing Law. This Agreement is governed by the laws of the State of _____, without regard to any conflict of law principles.

13.9 No Conflict. This Agreement and the Easement are made and given in connection with the Solar PPA. In the event of any conflict between the terms of this Agreement and the Solar PPA, the terms of the Solar PPA will control.

13.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

13.11 Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

13.13 Entire Agreement; Waivers. This Agreement constitutes the entire agreement between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

GRANTOR:

GRANTEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

EXHIBIT A
DESCRIPTION OF PREMISES

EXHIBIT A-1
DEPICTION OF SITE

9 Clean Model Site Lease Agreement

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

SOLAR ENERGY FACILITY SITE LEASE AGREEMENT (_____ Project)

This **SOLAR ENERGY FACILITY SITE LEASE AGREEMENT** (this "**Agreement**") is made, dated, and effective as of _____, 201_ (the "**Effective Date**") by and between _____, whose address is _____ (**Lessor**), and _____, a _____, whose address is _____ (**Lessee**). Each of Lessor and Lessee are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Lessor is the owner of certain real property located at _____, _____ County, _____ ("**State**"), consisting of land and certain improvements, buildings, and other structures located thereon, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the "**Property**").
- B. Lessee is a developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for the delivery of electrical energy to be installed, maintained, operated, and used on the Property.
- C. Lessor and Lessee are parties to that certain Solar Energy Power Purchase and Sale Agreement dated of even date herewith (the "**Solar PPA**"), pursuant to which Lessee (as System Owner) has agreed to sell to Lessor (as Host Customer), and Lessor has agreed to purchase from Lessee, all of the electrical energy produced by a solar photovoltaic electric generation system (as defined in the Solar PPA, the "**System**") to be installed and operated by Lessee on a portion of the Property.
- D. In furtherance of the Solar PPA, Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive lease of that portion of the Property described and depicted on the attached Exhibit B (the "**Premises**") together with a right of ingress to and egress from the Premises for purposes of (i) constructing, installing, maintaining, owning, operating, repairing, and removing the System,

(ii) transmitting electrical energy to, on, over, and across the Property, and (iii) accessing the System on, over, through, and across the Property on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and intending to be legally bound hereby, Lessor and Lessee hereby agree as follows:

AGREEMENT

1. **Grant of Lease; Purpose of Lease; Permitted Uses and Activities.**

1.1 Lease and Confirmation. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Premises to Lessee and grants to Lessee certain rights of access and use on, over, and across the Property for the purposes and activities set forth herein.

1.2 Purpose of Lease. The lease created by this Agreement is solely and exclusively for solar energy-generation and sale purposes, and throughout the Term (as defined in Section 2), Lessee shall have the exclusive right to use the Premises for solar energy generation and sale purposes.

1.3 Permitted Uses and Activities. The rights granted to Lessee in this Agreement permit Lessee to do the following:

1.3.1 Operations. Use the Premises and such other areas of the Property as identified and depicted on the attached Exhibit B for solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, maintaining, improving, repairing, relocating, and removing the System on and from the Premises; (b) making such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises; (c) parking in designated areas of the Property; (d) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (e) installing gates, fences, and such other security measures as may be necessary or desirable in Lessee's sole determination, to secure the System; and (f) installing, maintaining, using, and repairing on the Premises, inverters, electrical wires and cables required for the transmission of electrical energy (collectively, "Operations").

1.3.2 Ingress and Egress. This Agreement includes the right of ingress and egress to and from the System over and across the Property.

1.3.3 License for Temporary Construction Laydown Area. Lessor hereby grants to Lessee a license to use that portion of the Property depicted on the attached Exhibit C and incorporated herein by this reference, for the assemblage of materials to construct, erect, and install the System (the "Laydown Area"). Upon completion of construction and installation of the System, Lessee will remove all materials from the Laydown Area and will restore the Laydown Area to substantially the same condition in which it existed immediately prior to Lessee's use.

1.4 Solar Covenant. Lessor hereby covenants to provide for the free passage of solar radiation to the System. Any obstruction to the passage of direct solar radiation across the Property to the System by Lessor or a tenant or assignee of Lessor is prohibited. Trees, structures, and improvements located on the Property as of the Effective Date shall be allowed to remain, and Lessee may not require their removal. Lessor shall not place or plant any trees, structures, or improvements on the Property after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee for any such trees, structures, or improvements. Lessee and Lessor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar covenant made in this [Section 1.4](#).

1.5 Lessee's Exercise of Rights; Acknowledgment of Lessor. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; *provided, however*, that Lessee will not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises or the Property. Nothing expressly or impliedly contained in this Agreement shall be construed to require Lessee to generate or sell any minimum or maximum amount of electrical energy from the System. Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, or to the ground, or a combination thereof.

2. Term; Termination. The term of this Agreement shall commence on the Effective Date and shall continue for a period of _____ (__) years, which term may be extended for up to ____ (__) consecutive periods of ____ (__) years each (collectively, the "**Term**"); provided however, Lessee's right of access shall continue in full force and effect for a period of _____ (__) days following the expiration or earlier termination of this Agreement for purposes of removing the System (save and except for termination following Lessor's exercise of its purchase option pursuant to the Solar PPA). Notwithstanding the foregoing, if the System is not installed on the Premises on or before _____ [date], this Agreement will terminate automatically and be of no further force or effect as to the Property, Lessor, or Lessee. Upon the expiration or earlier termination of this Agreement, Lessee shall surrender to Lessor all of Lessee's right, title, and interest in and to the Premises by executing and recording in the real property records of _____ County, _____ (the "**Records**") an instrument evidencing the termination of this Agreement and Lessee's interest in the Property.

3. Rent. As consideration for the rights and interests granted by Lessor under this Agreement, Lessee shall pay Lessor rent in the amount of _____ Dollars (\$____) per year ("**Rent**"). Lessee shall pay Lessor the initial Rent payment within _____ (__) after the Effective Date for the first twelve (12-) month period of the Term, and shall thereafter pay each Rent payment on or before the applicable anniversary of the Effective Date for the forthcoming twelve (12-) month period.

4. Ownership of System; Financing Statements. The System is and shall remain Lessee's personal property at all times, shall not be a fixture on the Property, and may be removed by Lessee in accordance with the terms and conditions of this Agreement and the Solar PPA. Lessee shall have the right to file in the central and county records in which the Property is located financing statements evidencing Lessee'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 Lessor. Lessor shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Lessor. Lessor shall indemnify Lessee against all losses, claims, costs and expenses (including attorneys' fees) incurred by Lessee in

discharging and releasing any such lien, encumbrance, pledge, levy or attachment arising by, under or through Lessor.

5. Lessee's Representations, Warranties, and Covenants.

5.1 Security. Lessee shall provide all security measures that Lessee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Lessee's Operations.

5.2 Maintenance. During the Term, Lessee shall, at Lessee's sole cost and expense, maintain the System and the Premises in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies.

5.3 Clean Condition. Lessee shall not unreasonably clutter the Premises, and shall collect and dispose of any and all of Lessee's refuse and trash.

5.4 Indemnity. Lessee will indemnify Lessor against liability for physical damage to property and for physical injuries or death to Lessor, Lessor's property or the public, to the extent caused by Lessee's construction, operation or removal of the System on the Premises, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Lessor or Lessor's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any losses of rent, business opportunities, profits and the like that may result from Lessor's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of the System pursuant to this Agreement.

5.5 Hazardous Materials. Lessee shall not violate, and shall indemnify Lessor against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, State, or local laws or regulations ("**Hazardous Materials**").

6. Lessor's Representations, Warranties, and Covenants.

6.1 Authority; No Third-Party Rights. Lessor represents and warrants to Lessee that there are no circumstances known to Lessor and no commitments to third parties that may damage, impair, or otherwise adversely affect Lessee's rights hereunder. Lessor and each person signing this Agreement on behalf of Lessor has the full and unrestricted right and authority to do so. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

6.2 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Agreement; (ii) take any

action that will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

6.3 Title Review and Cooperation. Lessor shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Lessor are unable to obtain such agreements from any third party holding an interest in the Property, Lessee and any Assignee shall be entitled (but not obligated) to make payments in fulfillment of Lessor's obligations to such third party and may offset the amount of such payments from amounts due Lessor under this Agreement. Lessor shall also provide Lessee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

6.4 Indemnity. Lessor will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its invitees, contractors or the public, to the extent caused by the operations, activities, negligence or willful misconduct of Lessor or its invitees, permittees or tenants.

6.5 Hazardous Materials. Lessor shall not violate, and shall indemnify Lessee for, from, and against, any claims, costs, damages, fees, or penalties arising from a violation (past, present, or future) by Lessor or Lessor's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any Hazardous Materials.

7. Taxes. Lessee shall pay all personal property taxes and assessments related to and imposed on the System by the applicable taxing authority. [Lessor shall pay all real property taxes and assessments related to and imposed on the Property by the applicable taxing authority, including any tax increase or assessment resulting from the installation of the System at the Property.] [**DRAFTING NOTE: MAY NOT APPLY TO MUNICIPAL SITUATIONS. ADJUST ACCORDINGLY.**]

8. Insurance. Each of Lessee [and Lessor] shall, at its own cost and expense, maintain, with a company or companies licensed or qualified to do business in the State of [_____], commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party shall be an additional insured under the other Party's policy. For the avoidance of doubt, Lessee's property insurance shall cover the System, and Lessor's property insurance shall cover the Premises and Property.

9. Assignment.

9.1 Assignment by Lessor; Transfer of the Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System, that no portion or component of the System is a fixture, and

that the System may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered with the conveyance of any fee or leasehold interest in or to any portion of the Premises (any such conveyance, a “**Transfer**”). Lessor shall notify Lessee in writing no fewer than fourteen (14) days before any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer. This Agreement shall survive any Transfer.

9.2 Assignment by Lessee. Lessee and any Assignee (as defined below) shall have the right, without need for Lessor’s consent, to finance the System and, provided that there is a contemporaneous assignment under the Solar PPA to the same Assignee, to convey, assign, mortgage, or transfer to one or more Assignees this Agreement (or any right or interest of Lessee in this Agreement), Lessee’s leasehold interest in the Premises, or the System. An “**Assignee**” is any of the following: (i) any one or more parties involved in financing or refinancing of the System, including, without limitation, any Lender (as defined in Section 10.1); (ii) any purchaser of the System, or any purchaser of all or any portion of Lessee’s interest in this Agreement and the Solar PPA; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company as described in subclause (iii); or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee’s business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Lessee will give notice to Lessor of any such assignment (including the address of the Assignee for notice purposes), provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Lessor with respect to such assignment until such notice shall have been given.

10. Lender Protections.

10.1 Notice of Lender. Lessee shall deliver to Lessor written notice of and contact information for any bank, financial institution or other institutional investor providing debt or equity financing for the System (each, a “**Lender**”) and any trustee or agent acting on any such Lender’s behalf, within thirty (30) days of any such party becoming a Lender.

10.2 Lender Collateral Assignment. Upon notice and delivery by Lessee pursuant to Section 10.1 of the name and contact information for any Lender, then Lessor shall be deemed to:

10.2.1 Acknowledge any collateral assignment by Lessee to the Lender, of Lessee’s right, title and interest in, to and under this Agreement, as consented to under Section 10.2.2;

10.2.2 Acknowledge that any Lender, as such collateral assignee, shall be entitled to exercise any and all rights of lenders generally with respect to Lessee’s interests in this Agreement; and

10.2.3 Acknowledge that it has been advised that Lessee 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.

10.3 Lender Cure Rights Upon Lessee Default. Upon any Lessee Default (as defined in Section 11.1), Lessor shall deliver to each Lender of which it has notice a copy of any notice of default delivered under Section 11. Following the receipt by any Lender of any notice that Lessee 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 Lessor agrees to accept any cure tendered by the Lenders on behalf of Lessee 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 Lessee, or cause the same to be remedied, as is given to Lessee after Lessee'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; and (b) the Lender shall not be required to cure those Lessee Defaults 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 Lessee and perform the duties of Lessee hereunder for purposes of curing such Lessee Default. Lessor 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 Lessee, but subject to the terms and conditions of this Agreement.

10.4 New Lease to Lender. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Lessor shall give prompt written notice to each Lender of which Lessor has notice. Lessor shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Premises with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, and shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new lease, the Lender shall (i) pay Lessor any amounts that are due Lessor from Lessee; (ii) pay Lessor any and all amounts that would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease; (iii) perform all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations that have not been performed by Lessee that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations that are not reasonably susceptible of being cured by such Lender. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Lessor. The provisions of this Section 10.4 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy the Premises without hindrance by Lessor or any person claiming by, through or under Lessor, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11. Default and Termination; Remedies; No Cross Default.

11.1 Lessor's Right to Terminate. Except as qualified by Section 10 above and subject to all notice and cure rights set forth therein, Lessor shall have the right to terminate this Agreement after (i) a material default in the performance of Lessee's obligations under this Agreement (a "**Lessee Default**") has occurred and remains uncured, (ii) Lessor simultaneously notifies Lessee and all Lenders in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Lenders, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days

for any Lender, Lessee or Lender has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion. Any termination by Lessor after the applicable notice and cure periods set forth above and in Section 10 shall be effective upon thirty (30) days' written notice to Lessee.

11.2 Lessee's Right to Terminate. Lessee shall have the right to terminate this Agreement at any time before the commencement of operations of the System upon thirty (30) days' prior written notice to Lessor. After the System commences operations, Lessee shall have the right to terminate this Agreement if a material default in the performance of Lessor's obligations under this Agreement (a "**Lessor Default**") has occurred and remains uncured after thirty (30) days' notice from Lessee of such Lessor Default. Any termination by Lessee after the applicable notice and cure period set forth above shall be effective upon thirty (30) days' written notice to Lessor.

11.3 No Cross Default. No event of default by Lessee, as System Owner, or Lessor, as Host Customer, pursuant to the Solar PPA shall constitute a Lessee Default or a Lessor Default under this Agreement. Any amendment, modification, expiration, or termination of the Solar PPA shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties hereto. Notwithstanding the foregoing or anything in this Agreement to the contrary, each of Lessor and Lessee has the right to terminate this Agreement if the Solar PPA terminates as a result of a default of either party thereunder.

12. Notice. Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may also be sent by fax transmission [or email] provided that such transmission includes delivery confirmation [or read-receipt confirmation, as applicable]:

Notice to Lessor:

Facsimile No.: _____
Attn: _____
Tel. _____

With a copy to:

Facsimile No.: _____
Attn: _____
Tel. _____

Notice to Lessee:

Facsimile No.: _____
Attn: _____
Tel. _____

With a copy to:

Facsimile No.: _____
Attn: _____
Tel. _____

If to any Lender or Assignee: At the address given for such Lender or Assignee pursuant to Section ____ or Section ____.

Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual Person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

13. **Legal Matters.**

13.1 Governing Law; Dispute Resolution. This Agreement shall be governed by the laws of the State of _____, without regard to any conflict of laws principals. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Premises are situated, or if none, then a federal court nearest the county in which the Premises are situated.

13.2 Consequential Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER LESSEE NOR LESSOR SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT. THE FOREGOING PROVISION SHALL NOT PROHIBIT LESSEE OR LESSOR FROM SEEKING AND OBTAINING GENERAL CONTRACT DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS AGREEMENT.

13.2.1 Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

14. **Miscellaneous.**

14.1 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 14.1.

14.2 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of “Force Majeure” (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable

efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. “**Force Majeure**” means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto.

14.3 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any Assignee all information pertaining to the financial terms of or payments under this Agreement, the System and related equipment design, methods of operation, and the like, whether disclosed by Lessee or any Assignee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Lessor shall get Lessee’s written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement or the System.

14.4 Quiet Enjoyment. Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Agreement.

14.5 Successors and Assigns; Agreement to Run With Land. This Agreement and the leasehold interest granted herein shall run with the land and survive any Transfer. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties.

14.6 Severability. In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Lessor and Lessee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

14.7 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

14.8 Memorandum of Lease. Lessor and Lessee shall execute in recordable form and Lessee shall then record in the Records a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Lessor. Lessor hereby consents to the recordation of any Assignee’s interest in the Premises.

14.9 Amendments. This Agreement may be amended only in writing signed by Lessee and Lessor, or their respective successors in interest.

14.10 Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

14.11 Entire Agreement. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between the Parties with respect to such subject matter.

14.12 Waivers. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any term of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSOR:

LESSEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by
_____, as _____ of
_____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201_ by
_____, as _____ of
_____, a _____, on its behalf.

Notary Public for _____
My commission expires: _
Commission No.: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

DESCRIPTION AND DEPICTION OF PREMISES

EXHIBIT C

DEPICTION OF TEMPORARY LAYDOWN AREA

10 Clean Model Site License Agreement

THE ATTACHED IS A FORM THAT NEEDS TO BE MODIFIED CONSISTENT WITH YOUR CIRCUMSTANCES. NOTHING IN THE ATTACHED AGREEMENT, OR ANY OTHER SUPPLEMENTAL MATERIALS, CONSTITUTES LEGAL, TAX, FINANCIAL OR ACCOUNTING ADVICE AND SHALL NOT BE SO CONSTRUED. IT IS INCUMBENT UPON THE PARTIES, AND THE PARTIES ARE ENCOURAGED, TO SEEK AND CONSULT THEIR OWN ATTORNEY AND BUSINESS AND TAX ADVISORS REGARDING THE MATTERS CONTAINED IN THIS AGREEMENT.

[RECORDING REQUESTED BY,
AND AFTER RECORDING,
RETURN TO:

(Space Above this Line for Recorder's Use Only)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "**Agreement**") is made and dated this ____ day of _____, 201__, (the "**Effective Date**") by and between [MUNICIPALITY OR SITE CONTROLLER], whose address is _____ ("**Licensor**"), and [SYSTEM OWNER], whose address is _____ ("**Licensee**"). Each of Licensor and Licensee is sometimes referred to in this [Memorandum/Agreement] as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Licensor is the owner of certain real property [together with certain improvements and structures located thereon] located in [COUNTY NAME], State of _____, more particularly described on the attached Exhibit A, which is incorporated herein by this reference ([the "**Property**"] or [the "**Premises**"].

B. Licensor and Licensee have entered into a Solar Power Purchase Agreement dated on or about the Effective Date (the "**PPA**") pursuant to which Licensee has agreed to sell to Licensor, and Licensor has agreed to purchase from Licensee, energy generated by a photovoltaic electric generating system owned by Licensee (the "**System**").

C. The PPA is for a term of [_____] (##) years, beginning on _____, 20__ and ending on _____, 20__ unless the PPA is earlier terminated or extended, as provided in the PPA.

D. Pursuant to the PPA, Licensor has agreed to grant Licensee an [irrevocable], non-exclusive license to enter upon the [Property/Premises] for the purposes and on the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **GRANT OF LICENSE.** Licensor hereby grants to Licensee a license to access, enter, cross, and use the [Property/Premises] for the limited purposes of (a) installing on, maintaining, operating, and removing from the [Property/Premises] the System; (b) vehicular and pedestrian access to the System; and (c) temporary parking of vehicles on the Property for the foregoing limited purposes (the “**License**”). The License may be exercised by Licensee and by Licensee’s employees, agents, and contractors. Licensee will consult with Licensor to schedule and coordinate Licensee’s activities on the [Property/Premises], as set out in the PPA. Such notice by Licensee may be given via email to the address for Licensor set forth in the PPA.

2. **TERM; NATURE OF LICENSE.** This Agreement and the License and rights granted herein are effective as of the Effective Date and expire on _____. The License is nonrevocable except upon expiration or earlier termination of the PPA, as described therein.

3. **USE OF PREMISES.**

3.1 **Use Rights.** Licensee’s right to use the Premises during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, improving, repairing, relocating, and removing the System on and from the Premises; (b) constructing and installing supporting structures, including but not limited to ground fasteners, such as piles and posts, and all necessary below- and above-ground foundations; (c) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing such security measures as set out in the PPA to secure the System; and (e) installing, maintaining, using, and repairing on the Premises fiber optic cables, inverters, meters, electrical wires and cables required for the collection and transmission of electrical energy to and from the System.

3.2 **Temporary Laydown Area.** During installation of the System and any maintenance or repair activities related thereto, Licensee may use portions of the Premises designated for storage of System components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the installation of the System, taking all commercially reasonable steps to maintain the Premises in compliance with county and municipal ordinances and regulations.

3.3 **Impacts to Premises.** Upon completion of installation of the System, Licensee will replace any disturbed soil or vegetation, and restore the Premises to as near the condition of the Premises as of the Effective Date as commercially reasonable. Licensee shall immediately repair, replace, or reimburse Licensor for any damage to the Premises caused by Licensee’s negligent acts or omissions on the Premises. The Parties

agree that installation of the System will require mounting and/or supporting such system on the ground of the Premises, and such does not constitute damage to the Premises within the meaning of this Section 3.3.

4. **INDEMNITY**. Licensee will indemnify, defend, and hold harmless Licensor for, from, and against (a) any violation of law, ordinance, rule, regulation or permit condition by Licensee, its employees, agents or contractors arising from or related to Licensee's activities on or use of the Property; (b) physical damage to property; and (c) physical injuries or death to any person to the extent caused by Licensee's intentional or unintentional acts, or negligence in connection with Licensee's exercise of the License and activities on the [Property/Premises], except to the extent such violations, damages, injuries or death are caused or contributed to by the negligent acts or omissions or willful misconduct of Licensor or Licensor's tenants, employees, agents, or contractors.

5. **COMPLIANCE WITH LAWS**. Licensee will comply with all laws, ordinances, rules, regulations and permit conditions related to the [Property/Premises] and Licensee's operations thereon.

6. **INSURANCE**. Until such date, if any, as the System is removed from the Property/Premises and the Property/Premises is restored in accordance with the PPA and all applicable laws, Licensee will, at its expense, maintain a commercial general liability insurance policy insuring Licensee and Licensor against loss or liability caused by Licensee's use of the Property under this Agreement, in an amount not less than [_____ Million Dollars (\$___,000,000)] of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Certificates of such insurance must be provided to Licensor at Licensor's reasonable request.

7. **MISCELLANEOUS**.

7.1 **Notices**. All notices or other communications required or permitted by this Agreement shall be given in accordance with the terms of the PPA.

7.2 **Waiver**. The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach of any provision of this Agreement will not constitute a waiver of any provision of this Agreement or limit the Party's right to enforce any provision or exercise any right in the future.

7.3 **Modification**. No modification or amendment of this Agreement is valid unless made in writing and executed by the Parties.

7.4 **Governing Law**. This Agreement and any disputes arising out of this Agreement will be governed by and construed under the laws of the State of _____.

7.5 **WAIVER OF CONSEQUENTIAL DAMAGES**. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF LICENSOR AND LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

7.6 **No Partnership.** Nothing contained in this Agreement may be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties to this Agreement.

7.7 **No Conflict.** Nothing in this Agreement shall be deemed to amend or modify the terms of the PPA or any other agreement between Licensor and Licensee. In the event of any conflict between this Agreement and the terms of the PPA, the terms of the PPA shall control in all instances.

7.8 **Assignments; Successors and Assigns.** This Agreement and the License may be assigned or transferred only in accordance with the terms of the PPA. This Agreement and the License shall run with the [Property/Premises] and inure to the benefit of each of Licensor and Licensee, and their respective heirs, successors, and assigns.

7.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LICENSOR:

LICENSEE:

_____,
a municipal corporation

_____,
a[n] _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

[ACKNOWLEDGMENT PAGES FOLLOW]

ACKNOWLEDGMENTS

EXHIBIT A

DESCRIPTION OF THE PROPERTY/PREMISES

[Include legal description of Property, description of premises as applicable, and any maps or drawings showing any limitations on license area.]

11 PPA Sample Term Handbook

Note: The materials presented in this PPA Term Sample Handbook are intended to provide alternative or additional terms beyond those included in the template PPA. As no single contract fits every project, some of these sample provisions may help negotiating parties craft language appropriate to their proposed agreement. Please note that these samples may cross-reference other provisions in a contract, so if used, they will likely need to be customized for the agreement in question.

11.1 Planning and Construction Phase Rights and Obligations

11.1.1 Sample No.1: Multiple Sites Covered Under Single PPA

Design, Development and Construction.

System Owner shall have sole responsibility for the design and construction of the Solar Projects and the Solar Project Meters and all related metering and sub-metering facilities, including the obligation to pay all fees, obtain all necessary permits and execute all necessary agreements with the participating utility(ies) for the interconnection facilities necessary for the ownership, construction, operation, and maintenance of the Solar Projects and delivery of electricity from the Solar Projects in accordance with the terms hereof. System Owner shall not be responsible for the cost and time associated with required zoning changes or waivers and any architectural board/committee approvals, which shall be the sole responsibility of Buyer. All such design, construction and upgrades shall be consistent with good industry practice. All interconnection facilities, including metering and sub-metering facilities, must be of sufficient capacity to permit the Solar Facility to operate at all times during each month at the project capacity set out in [Section ##/Exhibit ##].

Site Interconnection Facility Plan.

System Owner shall construct or upgrade the interconnection facilities, including metering and sub-metering facilities, and cause them to become operational as necessary to meet its obligation to sell electricity to Buyer. System Owner reserves the right to deem a specific Buyer site ineligible for a Solar Facility if the utility requires interconnect infrastructure modifications exceeding #% of the total cost of building a Solar Facility on such site. System Owner may subcontract the responsibility for construction or upgrade of any interconnection facilities to third parties. Any plan for construction or upgrades to interconnection facilities must address and describe (i) the switching, metering, relaying, communications and safety equipment that will constitute the interconnection facilities; (ii) the processes, procedures for, and timing of the procurement, construction, testing and placement into operation of the interconnection facilities and their connection to the point of delivery; (iii) the billing and payment schedules for the construction, operation and maintenance of the interconnection facilities; (iv) the operating procedures and requirements of the interconnection facilities, including the requirements for the Solar Facility to be capable of immediate disconnection from the point of delivery in accordance with Good Utility Industry Practice(s) or in the event of Emergency, and (v) the terms, conditions and other requirements relating to the construction, operation and maintenance of the Interconnection Facilities. As between Buyer and System Owner, all expenses associated with the

procurement, construction, installation and operation of the interconnection facilities shall be paid by System Owner in accordance with this Agreement.

11.1.2 Sample No. 2: Single Site/Single System

Site Assessment and Planning.

System Owner shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures and/or land on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange interconnections with the Utility; to make any necessary applications to other agencies for the Project; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

11.1.3 Sample No. 3: Multiple Sites Covered Under Single PPA

Initial Phase

Promptly following the execution of this Agreement, System Owner will commence pre-installation activities relating to the Solar Projects, which shall include, without limitation, the following:

- (a) obtaining financing for the Solar Projects, SRECs, and execution by Host Customer/Buyer and assignment by same to System Owner of any rebate contract(s);
- (b) obtaining all permits, contracts, and agreements, required for the installation of the Solar Projects;
- (c) obtaining all necessary authority from the PUC or other regulatory entities for the operation of the Solar Projects and sale and delivery of Output to Buyer/Host Customer;
- (d) effect the execution of all agreements required for utility interconnection of the Solar Projects;
- (e) to the extent applicable, enter into contract(s) for the installation of the System, subject to the terms of the Site Lease Agreement and any proposed financing;
- (f) receiving all approvals required pursuant to this Agreement and the Site Lease Agreement

Design Phase.

During the Design Phase, System Owner shall proceed with all activities necessary to allow commencement of the Construction Phase, including completing the preliminary requirements set forth below. Upon completion of this phase, System Owner shall proceed with the Installation & Construction phase.

- a) Preliminary Requirements:

(i) System Owner must comply with all requirements set forth in Exhibit ## [Engineering & Construction Requirements].

(ii) Within sixty (60) days after the Effective Date:

A. System Owner shall notify Buyer/Host Customer in writing of the Expected Commercial Operation Date. Such Expected Commercial Operation Date shall be no later than the utility reservation deadline date if such a date exists or 365 days after the Effective Date.

B. Each Party shall furnish to the other current certificates evidencing that the insurance coverage required under this Agreement is being maintained.

(iii) Within ninety (90) days from the Effective Date, System Owner must submit 65% engineering drawings and specifications for the Solar Projects to Buyer/Host Customer for approval from the Buyer/Host Customer, which shall not be unreasonably withheld, conditioned or delayed.

(iv) Within ninety (90) days from the Effective Date, System Owner must have obtained a financing commitment for construction of each applicable System, and submitted a signed term sheet as satisfactory proof of such financing commitment to the Buyer/Host Customer.

(v) Within 150 days from the effective date:

A. System Owner must have obtained approval from the Buyer/Host Customer, which shall not be unreasonably withheld, conditioned or delayed, of the final 100% detailed engineering drawings and specifications for the Solar Projects.

B. System Owner must provide a cost estimate for the decommissioning of each System at the time of its removal.

(vi) One hundred and eighty (180) days after the Effective Date for the applicable System, System Owner must have obtained all necessary environmental approvals or permits for the applicable System before construction begins.

Construction Phase.

a) Prior to the utility reservation deadline date or 365 days after the Effective Date, System Owner shall obtain from the local electric utility an Interconnection Agreement and shall initiate operation of each System.

b) System Owner will cause each System to be designed, engineered, installed and constructed substantially in accordance with Exhibit # of this Agreement and Applicable Law, including but not limited to, the payment of prevailing wages, if applicable. All construction of the applicable System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by System Owner or by independent contractors with demonstrated competence and experience in the construction of the photovoltaic systems, and duly licensed under the laws of the State of _____, pursuant to written contracts with System Owner. Prior to the commencement of construction on any applicable System, System Owner shall deliver to Buyer/Host Customer for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, a complete set of plans and specifications relating to the

installation of the applicable System, which shall comply with all applicable construction codes. Buyer/Host Customer and System Owner shall agree to mutually beneficial timing with regard to submittal of plans for construction, notice of approval, rejection or approval with conditions. Buyer/Host Customer shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that System Owner is adhering to the specifications provided for in Exhibit # to the Agreement.

c) System Owner must comply with all requirements set forth in applicable building and electrical codes and Exhibit #.

d) System Owner shall provide to Buyer/Host Customer a construction schedule and safety plan. System Owner shall design, obtain permits, install, operate, and maintain each System so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at System Owner's sole expense. Except for emergency situations or unplanned outages, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Buyer/Host Customer and Buyer/Host Customer's employees, visitors, tenants and licensees and their customers to the extent commercially practical. System Owner shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Buyer/Host Customer for conduct of business on the Site. System Owner shall be responsible for all aspects of site security and shall notify Buyer/Host Customer if additional security measures only within the power of Buyer/Host Customer are required.

e) System Owner shall cause each System to be designed, installed and constructed in accordance with applicable law, with all requirements of this Agreement and pursuant to the final approved project design, and at System Owner's sole cost. Upon completion of construction of each System, System Owner shall verify that the System is delivering energy as stated in Section ##.

11.1.4 Sample No. 4: Multiple Sites Covered Under a Single PPA Plus Alternative Site Selection

Inspection of Premises

(a) Prior to commencement of construction of each of the Solar Projects, preferably prior to the Effective Date, and no later than the completion of the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects, if applicable, for each Local Unit Facility, System Owner shall investigate and secure an opinion from a structural engineer licensed in the State that the Local Unit Facility roof is structurally sound and requires no structural reinforcement to support the Solar Projects to be provided in accordance with the terms hereof. A wind analysis shall also be conducted by or on behalf of System Owner to insure the proposed mounting structures for the Solar Projects shall be sufficient to meet wind conditions at each Local Unit Facility. A copy of such opinion and analysis for each Local Unit Facility shall be delivered to the Authority and applicable Customer.

(b) If the System Owner delivers to the Authority a Certificate of an Authorized Officer of the System Owner to the effect that such opinion and/or analysis and/or other credible evidence demonstrates any of the following: (i) that structural reinforcement of a Local Unit Facility would be required in order to support the contemplated Solar Projects, (ii) that any roof of a Local Unit Facility is structurally unsound or that the Local Unit Facility is not otherwise available for the contemplated Project, including issues of title, damage,

or condemnation affecting the Local Unit Facility, (iii) that there are other latent subsurface or structural conditions present at any Local Unit Facility that is not a roof, which latent subsurface or structural conditions were not contemplated in its Company Proposal and would have a material adverse financial impact on the System Owner or (iv) that the existing warranties can only be maintained through an unreasonable scope of work, or at an unreasonable cost, in either case as determined solely by the Authority, and if in any such case (clauses (i) – (iv) inclusive) the Authority, in exercising its reasonable discretion, agrees with such determination as evidenced by their acknowledgment of such System Owner Certificate by an Authorized Officer of the Authority, then neither the Authority nor Customer shall have any responsibility to provide any additional funding for such Solar Projects, and System Owner is not entitled to any additional compensation for such Solar Projects, it being understood by the Parties that any such circumstance has been preliminarily reviewed and investigated by System Owner, as any contemplated cost relating thereto shall have been included in the Company Proposal as part of the submitted cost of the Projects.

c) To the extent the Authority executes and delivers to System Owner the acknowledgment contemplated by subsection (b) above, notwithstanding the other provisions of subsection (b) above the Parties shall work together in good faith to select an alternative location (hereinafter, such alternative location shall be known as the revised Local Unit Facility for all purposes hereof and of the other Program Documents) within the jurisdiction of the following, and in the following order: (i) first of the affected Series 2012 Local Unit for which the Solar Project shall no longer be developed, in which case the revised Local Unit Facility shall act as the location for the replacement renewable energy project (hereinafter a Solar Project for all purposes hereof and of the other Program Documents), and as necessary, required or desirable, the revised capital improvement project (hereinafter a Capital Improvement Project for all purposes hereof and of the other Program Documents), both of which Projects, shall to the maximum extent practicable, be of a similar (or more advantageous to the Parties) size, scope and economic impact as the Projects being replaced, (ii) second, within the jurisdiction of any other Series 2012 Local Unit, in which case the revised Local Unit Facility and Project shall be located in such agreed upon jurisdiction, and (iii) if a suitable replacement location within such jurisdiction is still not available on a mutually agreeable basis, then from any location within (and including) the County upon which the Parties can agree, in which case the revised Local Unit Facility and Project shall be located in such agreed upon jurisdiction.

(e) If after good faith negotiations the Parties are unable to secure a replacement Local Unit Facility and Project within six (6) months of the date of the Authority's acknowledgment of the Certificate of an Authorized Officer of the System Owner contemplated in subsection (b) above, then the System Owner shall have the option, exercisable at any time within nine (9) months of the date of such Authority Certificate, to abandon the Project associated with the Local Unit Facility that was to be replaced. Such option shall be exercised by the System Owner delivering a Certificate of an Authorized Officer of the System Owner to the Trustee, the County, the Authority, and the affected Series 2012 Local Unit, (i) setting forth the authorization for, and the reasons why the Project and Local Unit Facility are being abandoned, and (ii) further, that attached thereto is a partial prepayment of Basic Lease Payments (or evidence thereof, in the case of a wire transfer or other similar conveyance) in immediately available funds that shall be applied in the manner set forth in Section # of the Company Lease Agreement. Upon the abandonment of any Project, the System Owner, the Authority and the Customer will enter into such amendments of the Program Documents as shall be necessary to evidence the partial termination of the Program Documents solely with respect to such Project.

11.2 Parties' Termination Rights

Termination

a) Buyer's Rights to Terminate: If System Owner fails to complete the preliminary requirements in conformance with Section ## with respect to any System, Buyer may terminate this Agreement as to that System without penalty, liability or expense of any kind to Buyer by providing to System Owner a written notice of termination after the deadline for completion of the preliminary requirements; provided, however that any such written notice of termination for non-compliance with Section ##, sections ## – ## shall be provided by Buyer to System Owner prior to the commencement of work date. Buyer may extend deadlines at its option. If Buyer elects to terminate pursuant to this paragraph, System Owner shall take all actions necessary to return the premises to the condition System Owner first encountered them, at no cost to Buyer.

b) System Owner's Rights to Terminate: If any of the following events or circumstances occur within ninety (90) days after the Effective Date (or as specified below), System Owner may (at its sole discretion) terminate the Agreement, subject to Section #, as to the applicable System, in which case neither Party shall have any liability to the other Party as to the applicable System:

- (i) System Owner determines that the Premises, as is, are insufficient to accommodate the applicable System;
- (ii) There exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the applicable System or would adversely affect the electricity production from the applicable System as designed;
- (iii) Financial incentives related to the Investment Tax Credit (ITC) or other state or federal tax incentives change in such a way that could reasonably be expected to adversely affect the economics of the installation for System Owner and its investors;
- (iv) System Owner is unable, after making best efforts, to obtain financing for the applicable System on terms and conditions satisfactory to it;
- (v) System Owner has not received a fully executed (i) Grant of Access Right (Exhibit A), and (ii) a release or acknowledgement from any mortgagee of the Premises, if required by System Owner's financing party, to establish the priority of its security interest in the applicable System;
- (vi) System Owner has reasonably determined that there has been a material adverse change in the rights of the Buyer to occupy the premises or the System Owner to construct the applicable System on the premises;
- (vii) System Owner, after making best efforts to do so, has not obtained and interconnection agreement from the Local Electric Utility for energy generated by the applicable System; or
- (viii) System Owner has reasonably determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance, or removal of the applicable System.

c) Remediation: If System Owner wishes to exercise its termination rights listed above with regard to a specific System, System Owner shall take all actions necessary to return the Premises where the applicable System was to be installed to the condition the System Owner first encountered it in.

d) System Owner's Project Documents: If System Owner exercises its rights under section ## above for any System, System Owner shall provide to Buyer all calculations, documents, plans and reports related to the planning and installation of the applicable System provided that Buyer shall indemnify and hold harmless System Owner for any and all claims based on any person's use, consultation, or reliance on such calculations, documents, plans and reports related to the planning and installation of the applicable System.

e) Buyer Option to Cure: Notwithstanding anything to the contrary, if System Owner determines that it wishes to terminate pursuant to section ## above, System Owner shall give written notice to Buyer within 15 days or other such time frame as agreed upon by the parties of such determination. Upon receiving such notice, Buyer shall have 45 days or other such time frame as agreed upon by the parties to provide a cure for the circumstance causing System Owner to consider termination. System Owner shall not exercise its rights under section 3.9(b) until it has provided a written notice to the Buyer of its intent to do so and allowed the Buyer 45 days or other such time frame as agreed upon by the parties to attempt to cure. Buyer shall have the option, but not the obligation, to cure.

11.3 Concealed Conditions

Concealed Conditions

Before construction is initiated, System Owner and/or its subcontractors shall visit the Buyer's site and familiarize itself with the local conditions under which Work is to be performed. Unless specifically stated and included in an addendum to this Agreement, System Owner is not responsible for subsurface or latent physical conditions at the Buyer's site or in an existing structure that would prohibit installation of the Solar Facility and that differ materially from those (a) readily visible or specified on Buyer provided drawings, or (b) not ordinarily encountered and generally recognized as inherent in the work of the character provided for in this Agreement. Conditions under (b) include extensive rock, or buried debris, underground piping, structures, or hazardous materials. If any of these concealed conditions are encountered, the parties agree that the condition will increase the time of performance of the Work under this Agreement, and/or may result in costs to the Buyer to cure Buyer's site concealed conditions and the parties shall sign a change order addendum incorporating the scope and cure of said conditions. Notwithstanding, if such concealed conditions are encountered, Buyer may terminate this contract with cause as to the particular site at which the concealed condition has been discovered. System Owner shall be entitled to recover from Buyer payment not to exceed \$36,000 per occurrence for all work performed at the affected site, including normal overhead and a reasonable profit up to the time at which the concealed condition was discovered. Concealed conditions of Buyer's site may arise from an inability of the Buyer to provide System Owner with site drawings or other documentation preventing System Owner from properly determining the structural integrity of the site and its ability to allow System Owner's work to be performed.

11.4 System Owner's Additional Representations, Warranties and Covenants

Additional Representations, Warranties and Covenants

- (a) System Owner warrants, represents, and covenants that all of its operating and maintenance personnel are and shall be adequately qualified and trained throughout the Term.
- (b) System Owner expressly represents that all goods supplied are and shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material, and workmanship, in conformance with the samples, drawings, descriptions, and specifications furnished to Host Customer, in compliance with all applicable laws.

11.5 Green Attributes: Attributes to Buyer/Site Host

Ownership of Green Attributes

- (a) Throughout the Term, System Owner shall transfer to Buyer/Site Host, and Buyer/Site Host shall receive from System Owner, all rights, title, and interest in and to the Green Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by System Owner, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer/Site Host from System Owner under this Agreement. System Owner agrees to transfer and make such Green Attributes available to Buyer/Site Host immediately to the fullest extent allowed by applicable law upon System Owner's production or acquisition of the Green Attributes. System Owner agrees that the Base Contract Price is the full compensation for all Green Attributes.
- (b) System Owner shall not assign, transfer, convey, encumber, sell, or otherwise dispose of any portion of the Green Attributes to any Person other than Buyer/Site Host.
- (c) During the Term, System Owner shall not report to any Person that the Green Attributes granted hereunder to Buyer/Site Host belong to anyone other than Buyer, and Buyer may report under any program that such Green Attributes belong to it.
- (d) System Owner shall document the production of Green Attributes under this Agreement by delivering to Buyer/Site Host, on an annual basis, an attestation of Green Attributes produced by the System(s) and purchased by Buyer/Site Host for the previous year. The form of attestation shall be agreed to by the Parties, and may be updated or changed by Buyer/Site Host as necessary to ensure Buyer receives full and complete title to, and the ability to record with any Governmental Authority all of the Green Attributes purchased hereunder.
- (e) At Buyer/Site Host's option, the Parties, each at their own expense, shall execute all such documents and instruments as may be necessary to transfer to Buyer/Site Host, or its designee, the Green Attributes specified in this Agreement.

11.6 System Performance Assurance

11.6.1 Sample No. 1: Estimated Annual Electricity Output

Expected Performance Output

As a result of variability in solar irradiation, wind, weather, performance of the electrical utility power grid, and other factors outside of System Owner’s control, System Owner does not warrant or guarantee a specific quantity of energy production. During the Operations Term, System Owner shall be make every effort to deliver to Buyer electrical energy on an annual basis equal to at least ninety-five percent (95%) of the Expected Performance Output as specified in Appendix #. For each subsequent Operations Year during the Term, the Expected Performance Output for the Solar Facility shall be revised downward on the anniversary of the Commercial Operation Date by multiplying (i) 100% minus the aggregate amount of the following Annual Degradation Factor, times (ii) the Expected Performance Output stated above. Annual Degradation Factor: eight tenths of a percent (0.8%) per Operational Year. For example, as of the commencement of the third Operational Year, the Expected Performance Output of the Solar Projects will be 100% - 1.6% = 98.4% times the Expected Performance Output.

11.6.2 Sample No. 2: Guaranteed Annual Electricity Output

Guaranteed Annual Electricity Output

(a) System Owner guarantees that the System(s) will produce the Guaranteed Annual Electric Output in each Contract Year, as adjusted by the Annual System Degradation Factor as defined in Exhibit #. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term, the Guaranteed Annual Electricity Output shall be decreased by the Annual System Degradation Factor.

(b) If a Production Shortfall exists in any Contract Year, Owner shall pay to Buyer/Host Customer, within thirty (30) days after the end of such Contract year, the difference between the average cost of electricity per kilowatt hour shown on the Buyer's/Host Customer's electric utility bill for the Contract Year for each kWh of such Production Shortfall and the Electricity Price.

GUARANTEED ANNUAL ELECTRICITY OUTPUT: _____ kWh/year
ANNUAL SYSTEM DEGRADATION FACTOR: 0.5% per year
ELECTRICITY PRICE: \$0.07985 per kWh during the first year of the contract
ELECTRIC PRICE INCREASE FACTOR (ESCALATOR): 2.519% per year

“Production Shortfall” means the amount, expressed in kWh, by which the actual amount of Electricity generated by the System in any Contract Year is less that the Guaranteed Annual Electricity Output for that Contract Year.

“Annual System Degradation Factor” means the factor expressed in percent by which the Guaranteed Annual Electric Output of the System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit #.

11.7 System Damage or Loss

11.7.1 Sample No. 1: System Loss, Termination and Liquidated Damages

System Loss

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

- (a) System Owner shall bear the risk of any System Loss, except to the extent such System Loss results from the gross negligence of Buyer or Buyer’s agents, representatives, customers, vendors, visitors, employees, contractors, or invitees (collectively, “Buyer Misconduct”).
- (b) In the event of any System Loss that results in less than total damage, destruction or loss of the System, this Agreement will remain in full force and effect and System Owner will, at System Owner’s sole cost and expense, subject to Section #(c) below, repair or replace the System as quickly as practicable.
- (c) To the extent that any System Loss that results in less than total damage, destruction or loss of the System, and is caused by Buyer Misconduct, Buyer shall promptly upon demand therefore from System Owner pay any and all costs and expenses of such repair or replacement.
- (d) In the event of any System Loss that, in the reasonable judgment of System Owner, results in total damage, destruction or loss of the System, System Owner shall, within twenty (20) Business days, notify Buyer whether Owner is willing, notwithstanding such System Loss, to repair or replace the System.

(i) If System Owner notifies Buyer that System Owner is not willing to repair or replace the System, this Agreement will terminate automatically effective upon the effectiveness of such notice and Owner shall promptly remove the System from the Premises in accordance with Section #. If such System Loss has been caused by Buyer Misconduct, Buyer shall, promptly following such termination, pay to System Owner, as liquidated damages and not as a penalty, the Termination Payment applicable as of such termination date. If such System Loss has not been caused by Buyer Misconduct, System Owner shall, promptly following such termination, pay to Buyer as liquidated damages and not as a penalty an amount equal to the net present value of the Foregone Buyer Benefit, using a discount factor of 3%, such amount not to exceed the replacement value of the System, unless the total System Loss occurred as a result of Force Majeure, in which case no such payment would be due and payable. “Foregone Buyer Benefit” is defined as (x) in the year of occurrence, the difference between the tariff rate applicable to Buyer at the meter served by the System in the year of occurrence of the System Loss and the Electricity Price multiplied by the Guaranteed Annual Electric Output of such System adjusted for the Annual System Degradation Factor and (y) for subsequent years the Applicable Rate is assumed to increase by 3% per year. It is the intention of the parties that System Owner pay the Buyer the Foregone Buyer Benefit for each year remaining in the then current Term. Such payment to the Buyer shall relieve System Owner of obligations under the Agreement with respect to such System, except for removal of the System.

(ii) If System Owner notifies Buyer that System Owner is willing to repair or replace the System, then (a) this Agreement will remain in full force and effect, (b) System Owner will repair or replace the System as quickly as practicable, and (c) if such System Loss has been caused by Buyer

Misconduct, Buyer shall promptly, upon demand therefore from System Owner, pay any and all costs and expenses of such repair or replacement.

11.7.2 Sample No. 2: System Loss or Host Facility Damage

System and Facility Damage and Insurance.

(1) System Owner's Obligations. If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, System Owner shall promptly repair and restore the System to its preexisting condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, System Owner shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System or (B) the Termination Value set out in Exhibit #.

(2) Purchaser's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any occurrence other than System Owner's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in Exhibit # and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

11.8 Logistical Provisions for Multiple Sites under a Single Agreement

Designated Representatives

(a) To ensure a smooth and orderly coordination of activities during the Construction and Interconnection Phase, the Authority, the System Owner and each Customer shall appoint a designated representative of such Party (each a "**Designated Representative**") who or which shall be authorized and directed by its principal to meet with the Designated Representative of the other Parties and shall have full power and authority, to the greatest extent practicable in light of applicable law governing the actions of the Authority and Customer, to bind its principal with respect to all construction matters relating to the Projects, and all operational matters relating to the Solar Projects.

(b) As soon as practicable following the Effective Date, the Designated Representatives shall hold, at a mutually acceptable time and location, an initial Project meeting, at which time the Designated Representatives shall prepare jointly, based on the best information available to Customer and System Owner (and if applicable, the Authority) at such time, a preliminary schedule for completing the construction of the Projects, and the interconnection, testing and start-up of the Solar Projects. After the initial Project meeting, the Designated Representatives shall meet periodically, but no less frequently than once every two (2) weeks, at such times and locations as they may mutually agree or as may be requested by one of the Parties for the purposes of coordinating all relevant construction matters with respect to the Projects, and all relevant

operational matters with respect to the Solar Projects, and achieving a timely completion of all Project work and all testing of the Solar Projects.

The Authority hereby appoints the Construction Manager designated by it under the Company Lease Agreement as its Designated Representative. System Owner shall submit its proposed Designated Representative to each Customer. Each Customer shall have five (5) Business Days to either approve or reject System Owner's proposed Designated Representative; *provided however*, that its approval shall not be unreasonably withheld, and any failure to respond within the five (5) Business Days specified shall be deemed to be a conclusive approval of System Owner's proposed Designated Representative.

Cooperation

The Authority and each Customer agree to reasonably cooperate and assist System Owner to the fullest extent practicable, at System Owner's cost, to perform any and all actions within their respective control that System Owner may reasonably request in connection with (a) the design, permitting, acquisition, construction, installation, interconnection, start-up, and testing of the Solar Projects, and (b) the design, permitting, acquisition, construction, renovation, and installation of the Systems, including, without limitation, the granting of any required rights of access to System Owner and its contractors in accordance with the terms of the site control agreements, the timely execution and return of any required consent of the Authority and/or such Customers, the execution and delivery of any Interconnection Agreement, and the participation as and when required of the Authority's and/or Customers' employees and representatives, including the Construction Manager, in the performance of any test in respect of the Solar Projects.

11.9 Removal and Reinstallation of Panels; Roof Maintenance and Repairs

System Interruption and Lost Production

(a) If at any time during the term of this Power Purchase Agreement, Customer is required to remove or interrupt, or cause the removal or interruption, as applicable, of the operation of one or more of System Owner's solar panels that comprise a portion of the Solar Projects, to repair or replace the roof of such Customer's Local Unit Facility, or perform required maintenance on any other of the Local Unit's equipment located on such roof, or for any other governmental reason for which no other commercially reasonable solution exists other than to interrupt some portion of service provided by the Solar Projects, Customer shall promptly notify System Owner and the Authority of the specific panels and/or other portion of the affected Solar Project that must be removed or shut down, and when removal or shut-down is required, taking into account to the greatest extent practicable any efforts within Customer's control to minimize the loss of Electricity generated by such removed or shut down (in whole or in part) of the Solar Project. In such instance, System Owner agrees to remove and re-install or shut down and re-initiate the operation of such minimum number of panels for the minimum amount of time necessary in order to allow Customer access to its Local Unit Facility to undertake the required task causing the need for such removal.

b) To the extent Customer is required to take the action set forth in subsection (a) above in whole or in part due to some action or inaction of System Owner or any of its designees, consultants, subcontractors or agents, or another licensee (other than the Authority or the Authority's designees, consultants, subcontractors or agents) under Customer's Local Unit License Agreement, then System Owner shall (i) bear and pay for the

cost of such removal, and (ii) reimburse Customer for the difference between (A) Customer's actual cost for electricity, as evidenced by that amount delivered and billed by the local electric utility distribution provider to Customer in lieu of the Electricity to have been provided by System Owner during such applicable period for which Customer is not receiving Electricity from System Owner, in whole or in part, and (B) the PPA Price that would have been applicable to such amount of electricity so delivered to Customer under clause (i) above, had System Owner delivered such deficient amount of Electricity during such period.

(c) Conversely, to the extent System Owner is required, with the Authority's consent, to remove and re-install or shut down and re-initiate the operation of a portion, or all of a Solar Project due to some action or inaction by Customer or any of its designees, consultants, subcontractors, or agents, System Owner shall be reimbursed by Customer at System Owner's actual out-of-pocket cost, plus ten percent (10%) overhead. Further, Customer shall reimburse the System Owner for the cost of lost production during the period of removal or shut-down in excess of ten (10) days in any twelve (12) month period, starting on the Commencement Date (for such Customer or as applicable, such Local Unit Facility) and each anniversary thereafter.

(d) The cost of lost production shall include an allowance for both lost Electricity at the applicable PPA Price, and lost SRECs, at the market value of such SREC's as determined in comparable transactions. Customer may at its option, elect to pay System Owner any amounts in this subsection (c) in either a lump sum payment, or in uniform monthly payments, including interest on the unpaid balance, at the rate set out in Section # (relating to payment terms) over not greater than a twelve (12) month period. For purposes of this subsection, an action of inaction of a Customer's designees, consultants, subcontractors or agents shall not include students unless such students are under the direct control of the Customer at the time such action or inaction occurred.

11.10 Alteration of Buyer's Facilities

Changes to Host Facility

The County and Buyer agree not to undertake any structural alterations or repairs to the Premises that may adversely impact the operation and maintenance of the Solar Projects by System Owner, without giving prior written notice to System Owner, and without obtaining the input from System Owner regarding the best manner in which such alterations or repairs might be conducted without affecting, or minimizing the effect on, as applicable, the operations and maintenance of the Solar Projects. If the County or Buyer shall perform any alterations or repairs that permanently reduce the production of the Solar Projects resulting from such alteration or repairs, then the Parties shall negotiate a per kWh PPA Price adjustment to make System Owner whole for any loss in production capability. The per kWh PPA Price adjustment shall be established by negotiation by the Parties or, failing agreement within a reasonable time, by arbitration pursuant to the provisions of Section ##.

ⁱ For examples of PPAs with additional exhibits, see the [Town of Lee, MA Recreation Site PPA](#) and the [Monmouth County, NJ PPA](#).

ⁱⁱ For provisions related to operations date, representations and warranties, etc. under an aggregated model, see the [Monmouth County, NJ PPA](#) (throughout) and [Arizona State Model PPA](#) (throughout). Readers should also note that under some state laws, if a system owner sells to a certain number of customers, then the owner is deemed a “utility” and subject to PUC jurisdiction. As a result, system owner will want to contract with a single entity that owns the meter with costs divided among the various hosts. If all the entities are behind a single meter, this should not be an issue, provided the retail sale of electricity to an end-use customer itself does not trigger additional regulatory constraints regardless of the number of customers served.

ⁱⁱⁱ For examples of staggered or phased development and milestones, see the [Monmouth County, NJ PPA \(Section 3.5\)](#), the [Arizona State Model PPA \(Section 3 & 7.4\)](#), and the [Boulder Valley School District, CO PPA \(Section 3\)](#).

^{iv} A prepayment model is one in which the power buyer (in this case, the municipality) helps finance the construction of the solar facility by paying for power in advance. This gives the developer/system owner an infusion of cash for installation costs, but may run afoul of laws that govern the financing of third-party owned projects or other municipal laws. Using revenue bonds to prepay for electricity is another option that has been employed by municipal utilities and governments. Local governmental authorities should also watch for any “take or pay” provisions that would require payment without regard to use. These provisions may conflict with laws applicable to municipal entities.

^v The [Monmouth County, NJ PPA \(Section 3.5\)](#) provides an example of staggered development and commercial operations timelines. In addition, the PPA Sample Term Handbook, Section 11.1.4 “[Sample No. 4: Multiple Sites Covered Under a Single PPA Plus Alternative Site Selection](#)” also includes provisions for identifying alternative sites in the event an individual site is deemed unsuitable.

^{vi} For alternative provisions addressing the ownership of Green Attributes, see the PPA Sample Term Handbook Section 11.5 “[Green Attributes: Attributes to Buyer/Site Host](#).”

^{vii} The [PPA Sample Term Handbook](#) contains examples of further representations, warranties, and covenants that may be included in a PPA.

^{viii} See the [City of San Jose, CA PPA \(see Section 13\(b\)\(3\)\(A\)\)](#) and the [Town of Lee, MA PPA \(See Section 8.4 and Exhibit F\)](#) for examples of Early Termination Fees.

^{ix} In particular, the [Tufts University Report on MA Solar PPA Risks](#) observes that if the system owner provides insurance, then the power buyer (the municipality) can expect insurance costs to account for 5.0% to 10.0% of the energy/power costs in a PPA. It may be less expensive if the municipality insures the system after construction, with the system owner identified as an additional insured party. The system owner would also reimburse the municipality for insurance premiums. Business interruption insurance may then be the system owner’s only insurance obligation after commercial operation of the system. Counsel for each party should consult the host utility’s interconnection rules and tax counsel to ensure any such arrangement does not run afoul of eligibility for applicable tax credits, and give full consideration to environmental risk insurance needs, commercial liability, and theft/property insurance.

^x For example, under the [Boulder Valley School District, CO PPA \(Section 4\(e\)\(iii\)\)](#), if the budgeting authority does not fund the District’s PPA, the system owner may terminate and remove the system, or continue operating and sell the power to a third party or utility. However, if the District elects not to extend the site license beyond the first 10-year term, then the PPA and all related agreements terminate, and the system owner will remove the system at the District’s cost. In addition, as discussed previously, in one instance (San Jose, CA), non-appropriation is considered a force majeure event.

^{xi} Some parties may wish to address roof conditions, concealed conditions, and reroofing in the site right agreement, although such details are often specifically addressed in the PPA. If a PPA is negotiated by a municipality, but a specific agency (such as a parks department) is the site host and a signatory to the site control agreement, then including such provisions in the site control agreement ensures that all parties are put on notice of their respective rights and obligations. For an example of a “Concealed Conditions” provision for a rooftop lease, see the [Cohasset, MA Model Rooftop Lease Agreement \(Section 9.9\)](#).

In general, the more obligations the parties include in a site control agreement that relate to the system, the more the terms of the PPA may be mirrored in the site control agreement. Some parties may wish to keep the system specifics—and each of the party’s rights and obligations related to the system and its operations—in the PPA to avoid duplication, but this may depend on the number of sites or agencies involved and how risk and obligations are allocated among the parties.

^{xii} Some site right agreements incorporate “system loss” provisions similar to those found in a PPA, contemplating circumstances where the system itself is destroyed. If parties incorporate such provisions, they should take care to match the parties’ obligations and remedies with the PPA. For an example of property damage, system loss, and system damage provisions incorporated in a site-right agreement, see the [Boulder Valley School District Site License Agreement \(Section 11\)](#). Again, the value of including such provisions in a site right agreement lies in ensuring that agencies or offices that may not have negotiated the PPA itself are involved and aware of potential responsibility in the event of a system loss.

^{xiii} While it is not ideal for a facility to require reroofing during the term of a PPA, it may nevertheless be necessary for one or more sites. A site right agreement may reflect this consideration, as represented by the [Cohasset, MA Model Rooftop Lease \(Section 8.4\)](#). Again, including such provisions in a site right agreement may not be necessary or desirable when the site host is the same party as the power purchaser, but if municipal agencies are relatively independent or operate on varied maintenance schedules, including such provisions help ensure the system owner and the site host are fully apprised of their rights and obligations under such circumstances.

^{xiv} In addition to circumstances where access to the site by other parties is a potential concern, a non-interference provision within the site right agreement may also be valuable where multiple sites are addressed under a single PPA, but each site has a separate manager or agency. This ensures that all parties are apprised of their covenant to minimize interference. For example, the [Boulder Valley School District Site License \(Section 3.04\)](#) contains such a clause. Often, similar language appears in the PPA itself, for example, in the [Monmouth County NJ PPA \(Section 4.1\)](#). Including it in both documents ensures that all parties are aware of their respective rights and obligations.

^{xv} For examples of indemnity clauses in the license and lease contexts, see the [Boulder Valley School District Site License \(Section 9.01\)](#), which provides for mutual indemnification of and by the parties, and [Cohasset MA Model Rooftop Lease \(Section 12\)](#), which includes a one-way indemnification of the lessor. The ability of a local government to indemnify another party may be subject to restrictions and limitations under state law.

^{xvi} The consideration for such agreements lies in the PPA power price and the covenants of each party to deliver, and to accept delivery of, the power produced. Further, the promise to build the system and generate power in exchange for a location from which to deliver it provides additional consideration in the site control agreement. Nonetheless, the parties may incorporate non-appropriation language in their site right agreement as in the [Boulder Valley School District Site License Agreement \(Section 16.05\)](#).

A municipality may be statutorily obligated to include non-appropriation language in any contract greater than one year in term, or it may include such language even where no consideration is exchanged for the site rights because there may be a risk of future costs arising from any obligation to relocate the system in the event the property is sold or the system otherwise must be moved. Including a non-appropriation clause can help make clear that the municipality is not providing any financial assurance that it will have funds available if the system must be moved or replaced later during the term.

^{xvii} For an example of a lease of property with potentially concealed conditions or additional hazards, and their associated contract provisions, see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(in particular Section 20\)](#).

^{xviii} For an example of exclusivity language, see the [Town of Cohasset, MA Model Landfill Lease Agreement \(Section 2.2\)](#).

^{xix} For an example of early termination rights expressly set out in the lease agreement (as opposed to only in the PPA), see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 3.2\)](#). Although site control agreements are usually coterminous with the PPA, early termination rights may be desirable if the site right agreement term commences immediately to allow due diligence and site planning, but the parties need flexibility in the event the site is not suitable, or the system owner's financing fails. In such instances, the PPA may be transferable to a new location, but the site lease should be terminated. Governing law may also dictate that the municipality has the right to terminate a site control agreement under specific circumstances.

^{xx} An example of nominal rent is contained in the [Cohasset, MA Model Landfill Site Lease Agreement \(Section 4\)](#).

^{xxi} For an example of more detailed and extensive covenants, see the [Cohasset, MA Model Landfill Site Lease Agreement \(Section 17\)](#). In addition, although parties typically address system decommissioning in the PPA, if a site is impacted by contamination or subject to specific permitting requirements requiring the lease parties to address decommissioning, then the parties may wish to add decommissioning and site restoration covenants to their lease agreement. For an example, see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 6\)](#).

^{xxii} For an example of provisions related to taxes in a site lease agreement, see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 4.1\(b\)\)](#).

^{xxiii} For examples of various insurance requirements, see the [Boulder Valley School District, CO Site License Agreement \(Section 9.02\)](#) and the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 5\)](#).

^{xxiv} For permutations on the protections of lenders' interests, see the [Boulder Valley School District Site License Agreement \(Section 12\)](#) and the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 15\)](#).

^{xxv} For an example of express termination provisions within a site lease agreement, see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Sections 3, 16 and throughout\)](#).

^{xxvi} For an example of financial assurance requirements within a site lease, see the [Town of Cohasset, MA Model Landfill Site Lease Agreement \(Section 4.2\)](#).

^{xxvii} The matter of a license's revocability is often determinative. A system operator and its financing partners will need comfort that the license cannot be revoked merely for convenience and that the license may terminate early only upon a buy-out of the PV system or other early termination under the

PPA. Removal of the term “irrevocable” may be less controversial than retaining it, so long as it is clear that the PPA is controlling. For an example of a revocable license, see the [City of Cincinnati, OH PPA \(Section 4.e\(i\)\)](#). For an example of an irrevocable, but short-term license, see the [City of San Jose, CA PPA \(Section 8\(a\)\)](#). We also found examples of licenses with provisions more typical of an easement or lease agreement, such as default and remedy terms, extensive insurance requirements, and lender protections. This type of model is represented by the collective [Boulder Valley School District, CO](#) agreements.

^{xxviii} The [City of Cincinnati’s PPA \(Section 4\(d\)\)](#) includes language in the PPA that grants to the system owner a nonexclusive, revocable license rather than setting out that license in a separate document. The [Arizona State Model PPA \(Exhibit A\)](#) includes an irrevocable grant of access rights for the term of the PPA. If the parties’ intention is that the license will be effective for so long as the PPA is in effect, adding such language to the license may provide additional comfort to the system owner and its lenders who may otherwise be concerned with the traditional revocability of a license.

^{xxix} The [Boulder Valley School District License \(Section 4\)](#) is an example of this generally followed practice. The site license provides an initial term of ten years, with two five-year consecutive renewals available. The parties’ termination rights follow the PPA terms for default, failure to meet deadlines, and other circumstances. In contrast, the City of San Jose executed an interesting example of a license agreement term not commensurate with the term of the PPA (see [Exhibit 3 of the City of San Jose, CA PPA](#)). In that transaction, the parties agreed to a license term of three years, which may be extended at the City’s discretion in three-year increments. Municipal contracting laws may necessitate such arrangements, but their acceptability to system owners will likely be case-specific.

^{xxx} A site license may provide for mutual indemnification, which system owners may prefer in situations of sites with frequent visitors, multiple users, or multiple uses because the heightened risk of damage or injury is tempered by a right to indemnification by the site host. For example, the [Boulder Valley School District Site License Agreement \(Section 9\)](#) contains mutual indemnification language.

While licenses are implicitly nonexclusive, some parties elect to incorporate express provisions restricting allowing only such third-party uses as do not interfere with the system or the system owner’s rights. This tact is used in the [Boulder Valley School District Site License \(Section 3.03\)](#). The “No Interference” provisions of that license agreement also provide extra protections for the system owner against concurrent uses. Such provisions may be especially useful in a multi-site situation in which the site host (which may not be the power purchaser under the PPA) expressly agrees to minimize interference with the license rights. Covenants of non-interference may also be incorporated into the PPA itself if the site host is also the power purchaser under the PPA. In any event, such provisions give the system owner assurances that any concurrent uses are addressed while making clear that the municipality reserves the right to continue existing activities or grant additional rights to third parties subject to the site license.

^{xxxi} For reference language, see the [Boulder Valley School District Site License Agreement \(Section 9.02\)](#).

DISCLAIMER

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