

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) and is made effective as of the _____ day of _____, 20____ (the “**Effective Date**”).

Purchaser:	[◆]	Seller:	[◆] [NTD: Name of SPV to be inserted.]
Address	[◆]	Address	[◆]
Phone	[◆]	Phone	[◆]
E-mail	[◆]	E-mail	[◆]
Site Ownership	Purchaser [owns/leases] the Site: [◆]	Additional Seller Information	[◆]

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This Agreement sets forth the commercial terms and conditions in Schedule "A" of the purchase and sale of solar generated electric energy from the solar panel system described in Schedule "B" (the "**System**") pursuant to General Terms and Conditions in Schedule "C", which System is installed at the Purchaser's facility (the "**Facility**") on lands (the "**Site**") noted in the Lease in Schedule "D" (the "**Lease**").

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

Schedule "A" – Summary of Commercial Terms and Conditions

Schedule "B" - System Description

Schedule "C" - General Terms and Conditions

Schedule "D" - Form of Lease Agreement

Purchaser:

Signature: _____

Printed Name: _____

Title: _____

Seller:

Signature: _____

Printed Name: _____

Title: _____

Schedule “A”

Summary of Commercial Terms and Conditions

- 1. Term:** This Agreement enters into force on the Effective Date with a Term of sixteen (16) years after the Commercial Operation Date of delivering electricity.
- 2. Termination:** The Purchaser may terminate this Agreement on each fourth (4th) anniversary of the Contract Term by providing one-hundred & eighty (180) days written notice to the Seller and paying the Buyout Amount in whole.
- 3. Roof Repair/Replacement:** If applicable, the Purchaser may replace the roof on the Site at its cost for the Remove/Reinstall Amount to be quoted by the Seller at the time of such request by Purchaser.
- 4. Environmental Incentives and Environmental Attributes:** All environmental incentives and environmental attributes accrue to the Seller.
- 5. Contract Price:** The Contract Price will be the cumulative sum of the value of electricity generated and consumed by Purchaser during the Term, calculated per Quebec Hydro's then current prices each month based on the higher of 100% of energy consumed during the first 12 months of the Term or 11.3 cents/kWh and then the higher of 60% of the energy consumed or 6.8 cents/kWh for each month of the Term thereafter remaining. The current average monthly electricity bill over the last twelve months, of the Purchaser is \$ _____ with a consumption of _____ kWh.
- 6. Seller Conditions:** In addition to those conditions specified in Schedule “C”, Section 6.a), the following Seller conditions apply:
 - a. Seller shall be responsible for all required permits from the [City] of [♦], including but not limited to Development Permit (if required), Building Permit, and Electrical Permit; and
 - b. Approval of an [Interconnection (net metering) Agreement] between the Purchaser and [Name of Utility having jurisdiction over Site].
- 7. Termination Payment:** If this Agreement is terminated by Seller as a result of Purchaser's breach, then the Seller shall be entitled to the Termination Payment calculated as per the Buyout amount.
- 8. System Installation:**

Includes:	[NTD: technical information to be inserted by Seller]
Excludes:	[NTD: insert technical information as required.]

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Schedule “B”

System Description

[NTD: To be completed by Seller]

- 1. System Location:**
- 2. System Size (DC kW):**
- 3. Expected Structure: [Ground Mount / Roof Mount / Parking Structure]**

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Schedule “B”

Project Site

[Address]

[Insert arial image of Site]

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Schedule “C”

General Terms and Conditions

1. Definitions and Interpretation.

- a. The capitalized terms used in this Agreement shall have the meanings ascribed to those terms throughout this Agreement and as follows:

“Buyout Amount” means the amount calculated as the pending payments that would be due for the remaining term, at the then current rate of electricity in whole..

“Change in Law” means: (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, orders, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, provincial, municipal or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

“Commercial Operation Date” has the meaning set out in Schedule “C”, Section 3(a).

“Condition Satisfaction Date” has the meaning set out in Schedule “C”, Section 6(a).

“Confidential Information” has the meaning set out in Schedule “C”, Section 20(a).

“Contract Price” has the meaning set out in Schedule “C”, Section 4(a).

“Contract Year” means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

“Default Event” has the meaning set out in Schedule “C”, Section 13(a).

“Defaulting Party” has the meaning set out in Schedule “C”, Section 13(a).

“Delivery Point” means the deliver point identified in the image in Schedule “B”. [NTD: Specify the Delivery Point in the image in Schedule “B”]

“Environmental Attributes” means environmental attributes, whether existing at the Effective Date of this Agreement, or coming into existence at any time following the Effective Date, and includes:

- (i) all positive attributes directly associated with, or that may be derived from, the metered energy generated by the System having decreased environmental impacts relative to certain other generation facilities or technologies or the System having decreased environmental impacts relative to certain other generation facilities or technologies or both;
- (ii) any credit, GHG Credit, reduction right, off-set, allowances, allocated pollution rights, certificates or other units of any kind whatsoever, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or off-set of GHG emissions or CO₂e emissions or other emissions as a result of the generation, purchase or sale of metered energy by the System; and
- (iii) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

For greater certainty, in the event that any Governmental Authority, non-governmental body, verification body, or other relevant authority has created, or creates in the future, or has or will sanction any form of registry, trading system, credit, offset, or voluntary program or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in this Agreement shall include the rights or benefits created or sanctioned under any such existing or future program or programs to the extent available as a result of, or arising from, the production of metered energy from the System.

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

“Environmental Laws” means any and all laws and other standards, guidelines, policies and requirements having the force of law or which are applied by any federal, provincial, municipal or other Governmental Authority having jurisdiction over the System now or hereafter in force relating in any way to the environment, environmental assessment, public health or safety, or the manufacture, use, transportation, storage and disposal of CO₂ emissions, or GHGs, including the related principles of common law and equity; and shall be deemed to include any such Environmental Laws of a provincial, municipal or local authority.

“Facility” means the Purchaser’s facility on the Site.

“Financing Party” or **“Financing Parties”** means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person.

“Force Majeure” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; blizzard, lightning; wind; drought; epidemics or pandemics, the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

“GHG” or “Greenhouse Gas(es)” means: (i) one or more of the following gases: CO₂, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, nitrogen trifluoride; and (ii) any other gas that is identified as having significant global warming or climate change potential under existing or future Environmental Laws.

“Governmental Authority” means a federal, provincial, municipal, Indigenous or local government or any of their boards or agencies or any regulatory authority entitled by law to act as a public authority.

“GST” means the Goods and Services Tax levied by the Government of Canada.

“Hazardous Substance” means any chemical, waste or other substance (i) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (ii) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (v) for which remediation or cleanup is required by any Governmental Authority.

“Indemnified Parties” has the meaning set out in Schedule “C”, Section 17(a).

“Indemnifying Party” has the meaning set out in Schedule “C”, Section 17(a).

“Insolation” has the meaning set out in Schedule “C”, Section 8(f).

“Lease” means the lease in Schedule “D”.

“Lease Agreement” has the meaning set out in Schedule “C”, Section 6(c).

“Liabilities” has the meaning set out in Schedule “C”, Section 17(a).

“Non-Defaulting Party” has the meaning set out in Schedule “C”, Section 13(a).

“Payment Default” has the meaning set out in Schedule “C”, Section 13(a)(i).

“Representatives” has the meaning set out in Schedule “C”, Section 20(a).

“Site” means the Lands noted in the Lease.

“System” means the solar panel system described in Schedule “B”.

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

“Taxes” means any federal, provincial and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, and specifically includes GST, but shall not include any income taxes or similar taxes imposed on Seller’s revenues due to the sale of energy under this Agreement, which shall be Seller’s responsibility.

“Term” has the meaning set out in Schedule “C”, Section 3(a).

“Termination Payment” has the meaning set out in Schedule “C”, Section 13(b)(iii).

“Third Party Claim” has the meaning set out in Schedule “C”, Section 17(b).

“Utility” has the meaning set out in Schedule “C”, Section 3(a).

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Term. Electric energy generated by the System will be delivered to Purchaser at the Delivery Point. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser will be required to purchase electric energy for the Facility from other sources as Purchaser’s electric requirements at the Facility exceeds the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

3. **Term and Termination.**

- a. **Term.** The term (“**Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Schedule “A”, unless earlier terminated as provided for in this Agreement. The **“Commercial Operation Date”** is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation or agreement with the entity authorized and required under applicable law to provide

electric distribution service to Purchaser at the Facility (the “**Utility**”), as set forth in Schedule “B”. This Agreement is effective as of the Effective Date and Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

- b. **Ownership at Expiration of Term.** If this Agreement is not terminated in accordance with the termination provisions herein or otherwise transferred in accordance with this Agreement, then at the expiration of the Term ownership of the System and all rights, obligations and liabilities therefore shall transfer to Purchaser.
- c. **Termination.** The Purchaser may terminate this Agreement on each forth (4th) anniversary of the Contract Term by providing one-hundred & eighty (180) days written notice and pay the Buyout Amount calculated as the pending payments that would be due for the remaining term, at the then current rate of electricity in whole.

4. Billing and Payment.

- a. **Monthly Charges.** For the first 12 months after activation, Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the higher of the then prevailing \$/kWh rate or 11.3 cents/kWh and corresponding costs of the local utility. The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month and rounded to the nearest whole cent, as measured by the System meter. After the first twelve months, the rate shall be the higher of 60% of the energy generated or 6.8 cents/kWh for each month of the Term thereafter remaining.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state: (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, (iii) applicable taxes including GST/QST, and (iv) the total amount due from Purchaser.
- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility’s electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser’s acts or omissions.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable by electronic deposit thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as set by the Bank of Canada (but not to exceed the maximum rate permitted by law).

5. Environmental Attributes and Environmental Incentives.

The Seller is the owner of all Environmental Attributes and Environmental Incentives, and Purchaser shall, where reasonably required, transfer all Environmental Attributes and Environmental Incentives to Seller. Seller shall be deemed to have purchased all Environmental Attributes and Environmental Incentives produced by the System as generated through payments made for metered energy. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately notify the Seller.

6. Conditions to Obligations.

- a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before [•] (the "Condition Satisfaction Date"):
 - i. Schedule "A", Section 6 of this Agreement;
 - ii. Approval of: this Agreement by Seller's financing parties;
 - iii. Receipt of all necessary zoning, land use and building permits; and
 - iv. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system.
- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) above are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate a new Condition Satisfaction Date, then the Seller may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement.
- c. **Commencement of Construction.** The Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of: (A) proof of insurance for all insurance required to be maintained by the Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance or interest on the Site or the Facility, as applicable, that such person will recognize Seller's rights under this Agreement for as long as Seller is not in default hereunder, and (C), a signed and notarized original copy of the Lease Agreement suitable for recording, substantially in the form attached hereto as Schedule "D" (the "Lease Agreement").

7. Seller's Rights and Obligations.

- a. **Permits and Approvals.** The Seller, with the Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
 - i. any zoning, land use and building permits required to construct, install and operate the System; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility on the Site. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct, or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's approved contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's approved contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility and Site to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or Site or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of: (i) any material malfunction in the operation of the System, or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays in the jurisdiction where the System is located. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards in the jurisdiction where the System is located. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by

law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Site in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Site or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Site.

- h. **No Warranty.** No warranty or condition, whether statutory, written, oral, express or implied, including without limitation warranties of merchantability and fitness for a particular purpose, or warranties arising from the course of dealing or usage of trade shall apply. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise such warranties and conditions are disclaimed by the Seller.

8. Purchaser's Rights and Obligations.

- a. **Exclusivity.** During the Term of this Agreement, the Purchaser shall not generate any electricity on the Site nor enter into any agreement with any third party to do so.
- b. **OHS Compliance.** Both Parties shall ensure that all occupational health and safety requirements and other similar applicable safety laws, codes or regulations are adhered to in their performance under this Agreement.
- c. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its approved contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost as calculated for in Schedule "A". In addition, Purchaser shall pay Seller an amount equal to the sum of: (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; and (ii) Tax Credits that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits in the jurisdiction where the System is located.

- d. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable legal fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Schedule "C", Section 19.a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
 - e. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Facility or Site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
 - f. **Insolation.** Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Schedule "C", Section 8(f) against Purchaser.
 - g. **Data Line.** Seller shall provide Purchaser a high-speed internet data line during the Term to enable Seller to record the electric energy generated by the System. If such line ceases to function, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Schedule "C", Section 4.
 - h. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of: (i) any material malfunction in the operation of the System, or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon: (i) an interruption in the supply of electrical energy from the System, or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
9. **Change in Law.** If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties.

If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

a.

10. Roof Maintenance, Replacement and Repair.

- a. If the System is installed on a roof at the Facility, in the event that the roof is damaged as the result of the Seller's construction activities, the Seller shall provide spot repair at its own cost. For the sake of clarity, Seller shall not be responsible for the entire roof replacement – only spot repair. A roof inspection shall be performed by the Seller prior to the installation of the System to determine the roof condition. This inspection shall be performed by the Seller at its own cost, and submitted to the Purchaser for review. If a roof replacement or other roof work on the Site, such as performance of warranty obligations, under the System is required during the Term of this Agreement, the Purchaser shall pay the Seller to remove and reinstall the System on the roof of the Site. During the period of roof repair, Purchaser shall pay Seller an amount equal to the sum of: (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the period of roof repair, (ii) revenues that Seller would have received with respect to the System under any rebate program and any other assistance program with respect to electric energy that would have been produced during the period of roof repair; and (iii) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes Seller's owners) would have received with respect to electric energy that would have been produced by the System during the period of roof repair. Determination of the amount of energy that would have been produced during the period of roof repair shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology.

11. Removal of System at Termination.

Upon the early termination of this Agreement, Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than 365 days after Termination. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, if the System is install on the roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Seller may install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry in the jurisdiction where the System is located and the required standards of the Utility. Seller shall maintain the meter(s) in accordance with industry standards in the jurisdiction where the Facility is located.

13. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “**Defaulting Party**”, the other Party shall be deemed to be the “**Non-Defaulting Party**”, and each event of default shall be a “**Default Event**”:
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
 - iii. if any representation or condition of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
 - iv. Purchaser loses its rights to occupy and enjoy the Site or the Lease expires or is terminated;
 - v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
 - vi. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser’s obligations to

make payments that otherwise would have been due under this Agreement.

b. **Remedies.**

i. **Remedies for Payment Default.**

- (1) If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may: (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- (2) If Payment Default is caused by Purchaser, Purchaser shall upon Seller's request, provide Seller with an irrevocable unconditional letter of credit in an amount reasonably sufficient that may become owing throughout the term of this Agreement. The Seller may draw on all or parts of the letter of credit at the Seller's reasonable discretion.

ii. **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may: (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If the Purchaser terminates this contract without cause prior to commencement of the System installation a design cancellation fee as determined by the Purchaser shall also apply in addition to any other remedy available to Seller.

iii. **Damages Upon Termination by Purchaser Default.** Upon a termination of this Agreement by the Seller as a result of a Default Event by the Purchaser, the Purchaser shall pay a termination payment to the Seller in the amount and at the time specified in Schedule C Attachment 1 of this Agreement (the "**Termination Payment**").

iv. **Obligations Following Termination.** If a Non-Defaulting Party terminates this Agreement pursuant to this section, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

c. **Cross-Termination.**

- i. Any termination of this Agreement shall operate as to concurrently terminate the Lease, and any termination of the Lease shall operate as to concurrently terminate this Agreement. If either of the foregoing agreements is terminated due to a Default Event by a Party, then that Party will be deemed to be in default under both agreements and both agreements will be deemed to have been terminated due to such Default Event, such that the other Party will have all rights and remedies available to it under each agreement (or at law or in equity) relating to such default, without duplication.

14. Representations, Warranties and Covenants.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:
 - i. Such Party is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:
 - i. **Lease.** Purchaser has title to or a leasehold or other property interest in the Site. Purchaser has the full right, power and authority to grant the Lease contained in Schedule D. Such grant of the Lease does not violate any law, rule or other governmental restriction applicable to Purchaser, Facility or the Site and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility or the Site. If Purchaser does not own the Facility or Site, Purchaser has obtained all required consents from the owner of the Site and/or Facility to grant the Lease and enter into and perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.

- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **Hazardous Substances.** There are no Hazardous Substances at, on, above, below or near the Site.

15. System and Facility Damage and Insurance.

a. System and Facility Damage.

- i. **Seller's Obligations.** If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees: (A) to pay for the cost of such restoration of the System, or (B) to purchase the System "as-is" at the sum of the amounts described in Schedule "C" Attachment 1 for the remaining given Contract Years.
- ii. **Purchaser's Obligations.** If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller'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 Term, Purchaser may elect either: (A) to restore the Facility, or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least _____ [\$♦] per occurrence and _____ [\$♦] annual aggregate, (C) employer's liability insurance with coverage of at least _____ [\$♦] and (iv) workers' compensation insurance as required by law.
- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least _____ [\$♦] per occurrence and _____ [\$♦] annual aggregate.

- c. **Policy Provisions.** All insurance policies provided hereunder shall: (i) contain a provision whereby the insurer agrees to give the party not providing the insurance: (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than [A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide] or otherwise reasonably acceptable to the other party.
- d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. Ownership; Option to Purchase.

- a. **Ownership of System.** Throughout the Term, subject to Schedule "C", Section 18, Seller shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Site. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Schedule "C", Section 19.a) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Site on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Site which could reasonably be construed as prospectively attaching to the System as a fixture of the Site, Purchaser shall provide a disclaimer or release from such lienholder. Purchaser consents to the filing of a disclaimer of the System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction where the Facility is located.

17. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable legal fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Schedule "C", Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising

out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Schedule "C", Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Schedule "C", Section 17(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Third Party Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable legal fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Schedule "C", Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Schedule "C", Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Site or the Site generally or any deposit, spill or release of any Hazardous Substance.
- d. **Limitations on Liability.**
 - i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Schedule "C", Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that: (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Purchaser is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Seller causes Purchaser

to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such loss shall be direct and not indirect or consequential damages.

- ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Schedule "C", Section 17 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Schedule "C", Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action occurs.

18. Force Majeure.

- a. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- b. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- c. If a Force Majeure event continues for a period of 90 days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by Purchaser without the prior written consent of the Seller, which consent may be arbitrarily withheld. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser: (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining

financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Schedule "C", Section 19(a), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

20. Confidentiality and Publicity.

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Schedule "C", Section 20(a), except as set forth in Schedule "C" Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Schedule "C", Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a

breach of the provision of this Schedule "C", Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Schedule "C", Section 20(a), but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued court order (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. **Goodwill and Publicity.** Purchaser shall not use any name, trade name, service mark or trademark of Seller in any promotional or advertising material without the prior written consent of Seller. Purchaser hereby permits Seller to use Purchaser's name, trade name, service mark, or trademark; Purchaser's location; photos of the System, Site and/or Facility; System technical details; and the execution and existence of this Agreement in Seller's promotional or advertising material. Except as provided in the foregoing, neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights. Purchaser hereby permits Seller to post a sign or banner on or in front of the Facility and/or Site during the course of construction.

22. **Dispute Resolution.** Any dispute between the Parties as to the interpretation of, the subject matter of, or in any way related to this Agreement, is to be resolved by the Parties attempting to reach a fair and equitable resolution by way of good faith negotiation within thirty (30) days of the date that such dispute arose. If the Parties cannot resolve the same within that thirty (30) day period, then either Party is entitled to commence arbitration to resolve such dispute, provided that:

- i. all disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this Agreement, will be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc.; and
 - ii. if either Party elects to proceed to arbitration to resolve such dispute, then such arbitration shall be held in Toronto, Canada in the English language.
- b. **Injunctive Relief.** For the avoidance of doubt, nothing in this Schedule "C", Section 22 shall prevent or delay a Party from applying to a court of competent jurisdiction for the

purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

- c. **Rights and Remedies.** All remedies of the Parties, by provision of this Agreement or by statute, at law or in equity, are cumulative and not alternative, and either Party may exercise such rights and remedies as it considers advisable, individually, alternatively, or collectively, in any combination, and the exercise of any right or remedy does not prejudice, or preclude, the exercise of any other right or remedy of that Party.

23. Miscellaneous Provisions

- a. **Choice of Law.** The laws of the Province of Quebec and Canada as applicable shall govern this Agreement.
- b. **Notices.** Any notice, approval or other communication which is required or permitted to be given or made by one Party to the other hereunder shall be in writing and shall be either: (i) personally delivered to such Party, in which case it shall be deemed to have been given on the day of delivery thereof if delivered before 4:00 p.m., or if delivered after that time, on the next business day; (ii) sent by regular or registered mail, charges prepaid, in which case it shall be deemed to have been given five (5) business days after the date of mailing; or (iii) sent by e-mail, facsimile or similar method of electronic communication, in which case it shall be deemed to have been given on the date of confirmation of receipt thereof if confirmation is provided before 4:00 p.m. on a business day, or, if confirmation is provided after that time or on a day that is not a business day, on the next business day.

Any notice shall be sent to the intended recipient at the following address, or at such other address(es) as the Parties may advise from time to time:

To the Seller:

[♦]
Attention: [♦]
E-mail: [♦]

To the Purchaser:

[♦]
Attention: [♦]
E-mail: [♦]

- c. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions in Schedule "C" shall include, without limitation, Section 4, Section 7(h), Section 15(b), Section 17, Section 20, Section 22, Section 23(a), Section 23.b), Section 23.f), Section 23.g), Section 23.h), Section 23.i) and Section 23.j).
- d. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the

assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

- e. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- f. **Contributory Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- g. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with this Agreement.
- h. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- i. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Schedules, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid,

such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- j. **No Third Party Beneficiaries.** Except for assignees and Financing Parties permitted under Schedule "C", Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

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Schedule “D”
Form of Lease Agreement
[See attached]

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