

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Agreement**”) is made effective as of the ____ day of _____, 20____ [NTD: The Effective Date of this Lease must be before, or the same, as the PPA] (the “**Effective Date**”),

BETWEEN:

◆ [NTD: Name of Purchaser under PPA to be inserted]
(the “**Lessor**”)

- and -

◆ [NTD: Name of Seller under PPA to be inserted.]
(the “**Lessee**”)

(each a “**Party**”, and collectively, the “**Parties**”)

WHEREAS:

- A. The Lessor has [title to OR a leasehold interest in] those lands legally and municipally described in the attached Schedule 1 (the “**Lands**”), including the building(s) and/or other structures located thereon and shown in the diagram shown in the attached Schedule 1 (collectively, the “**Building**”); and
- B. The Lessee wishes to lease those portions of the [rooftop of the Building/parking lot/other description] shown in the diagram of the [Building/parking lot/other] shown in the attached Schedule 1 (collectively, the “**Premises**”) for the purpose of installing, interconnecting, testing, commissioning, operating, repairing, maintaining, replacing, decommissioning, disconnecting, uninstalling and removing (collectively, the “**Purpose**”) solar panels and all related equipment, chattels, facilities, fixtures, additions and improvements required in connection with such Purpose (collectively, the “**Equipment**”), and the Lessor wishes to lease the Premises to the Lessee for such Purpose, all on and subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the sum of **ONE DOLLAR (\$1.00)** paid by the Lessee to the Lessor, and in further consideration of the respective covenants of the Parties contained herein and in the Power Purchase Agreement (as defined below), and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions: The following capitalized terms have the meanings ascribed to them throughout this Agreement and as follows:

- (a) “**Applicable Laws**” means all applicable statutes, laws, ordinances, bylaws, regulations, rules, instruments, codes, permits, orders, constitutions, treaties, common law, judgments, decrees and other requirements and rules of any federal, provincial, municipal, local, foreign or other governmental bodies, agencies,

courts, tribunals, judicial bodies, arbitral bodies, arbitrators or authorities having jurisdiction and lawfully empowered to make or impose the same in respect of this Agreement; and

- (b) **“Power Purchase Agreement”** means, collectively, the power purchase agreement to which this Lease is scheduled, or any and all other power purchase agreements entered into by the Parties relating to the sale, by the Lessee to the Lessor, of electricity generated by the Equipment.

1.2 Interpretation:

- (a) In this Agreement: (i) grammatical changes shall be made where the context requires, including changes from the plural to singular and vice versa; (ii) the words “person” and “persons” shall include corporations, partnerships and all other entities of whatsoever nature and kind; and (iii) the words “include”, “includes” and “including” shall be read and understood to be followed by the words “without limitation”.
- (b) The division of this Agreement into articles and sections and the insertion of headings herein is for the convenience of reference only and shall not affect and shall not be construed as affecting the interpretation hereof.
- (c) The recitals set forth above and the attached schedules are hereby incorporated herein by reference.
- (d) Any reference herein to statutes shall include, unless a contrary intention is expressed, any such statute and all regulations made thereunder, each as varied, amended, modified, supplemented, re-enacted or replaced from time to time.

1.3 Schedules: The following schedules are attached to and form part of this Agreement:

- (a) Schedule 1 – Description of Lands and Premises
- (b) Schedule 2 – Rules and Regulations

ARTICLE 2 LEASE OF PREMISES

2.1 Grant of Lease: The Lessor hereby leases the Premises to the Lessee for the Purpose, on and subject to the terms and conditions set out herein.

2.2 Use of Premises:

- (a) The Lessee shall use the Premises solely for the Purpose, except as otherwise consented to by the Lessor. For greater certainty, the Purpose shall include a right on the part of the Lessee to install any and all cables, conduits, wires, pipes, and other hardware reasonably necessary for the interconnection of the Equipment to the Building’s electrical systems and panels, whether installed within the Premises or outside of the Premises, including the right to excavate the most direct path possible between any two points.

- (b) In addition to the lease granted pursuant to Section 2.1, the Lessor hereby grants the Lessee the right of access to the Premises by way of ingress and egress through the Lands and the Building, provided that the Lessee shall comply with any reasonable security requirements and other rules and regulations for the Lands and the Building in exercising such right of access, but further provided that the Lessee shall not be deemed in default under this Agreement or under any Power Purchase Agreement between the Parties to the extent that the Lessee is delayed in carrying out its obligations thereunder as a result of such security requirements.
- (c) All Equipment and other property installed, fixed or placed upon the Premises by the Lessee shall remain the property of the Lessee during the Term, and may be removed by the Lessee at any time (provided that no such removal, in and of itself, will relieve the Lessee of any of its obligations to sell power to the Lessor pursuant to any Power Purchase Agreement entered into between the Parties).
- (d) The Lessor shall be fully responsible for the physical security of the Premises. Without limiting the generality of any liability and/or indemnity provisions contained herein, the Lessee shall not be required to construct or maintain any fencing, gates, doors, locks, partitions or other fixtures, additions or improvements designed to secure the Premises or delineate the Premises from the remainder of the Building nor to secure the Premises (or keep any persons, including trespassers, out of the Premises).
- (e) Prior to granting the Lessee possession of the Premises, the Lessor shall ensure that the Premises are cleared of any debris and obstacles, and ready for the Lessee's installation of the Equipment.

2.3 Maintenance and Repair:

- (a) Throughout the Term, the Lessee shall be responsible for repairing and maintaining the Premises (reasonable wear and tear excepted) and its Equipment at its sole cost and expense, provided that any repairs, maintenance or replacements that are capital in nature (including any replacements of the roof, roof membrane, or other structural elements of the Building, as applicable) shall be the sole responsibility of the Lessor and shall be carried out by the Lessor at its sole cost and expense, including making any payments that may be required pursuant to the Power Purchase Agreement.
- (b) In the event that the Lessor fails to carry out any repairs, maintenance and/or replacements that are capital in nature and which are required for the safe or efficient operation of the Equipment, the Lessee shall have the right, on fifteen (15) days' prior written notice, to carry out, at the expense and in the name of the Lessor, such repairs, maintenance and/or replacements, and shall be entitled to recover all costs thereof from the Lessor, including any roof replacement payments required in the Power Purchase Agreement.

2.4 Property Rights:

- (a) The Parties acknowledge that the lease granted pursuant to Section 2.1 is intended to convey a leasehold interest to the Lessee for the duration of the Term

(including any extensions and renewals thereof). Notwithstanding the foregoing, the Lessee shall not register such leasehold interest but shall be entitled to register a caveat regarding such interest with the Registrar of Land Titles for the jurisdiction in which the Premises is located.

- (b) Subject to Section 3.3(a), the Equipment shall, at all times, remain the property of the Lessee and shall not be deemed to form part of the Premises nor become the property of the Lessor, notwithstanding any degree of affixation of the Equipment to the Premises. The Lessee shall be entitled to register a fixtures notice with the Registrar of Land Titles for the jurisdiction in which the Premises is located in respect of such interest.
- (c) The Lessee shall not permit any lien, charge, mortgage or encumbrance to be registered against the land title to the Premises or otherwise attach to the Premises, including but not limited to as a result of any alleged non-payment to any party on the part of the Lessee, and if any such registration, charge or attachment occurs, then the Lessee shall forthwith take all steps necessary to discharge the registration, charge or attachment.
- (d) The Lessee shall not do any act nor make any contracts so as to encumber or affect in any manner the title and rights of the Lessor in and to the Lands or the Premises, but shall be entitled to encumber or affect its own leasehold interest in and to the Premises provided that no contract, transfer, assignment, mortgage, judgment, or lien arising out of any relevant transactions of the Lessee shall in any manner affect the title of the Lessor in and to the Lands nor take precedent to any of the rights or interests of the Lessor in and to the Lands.

2.5 Permits, Licenses, etc.:

- (a) The Lessee shall be responsible for obtaining any and all permits, licenses, consents, approvals and authorizations required for the installation, interconnection, testing, commissioning, operation, repair, maintenance, replacement, decommissioning, disconnection, uninstallation and removal of the Equipment.

2.6 Rules and Regulations: The Lessee shall comply with any of the Lessor's rules and regulations for the Premises as set out in the attached Schedule 2.

2.7 No Operating Costs: For greater certainty, the lease granted pursuant to Section 2.1 is not intended to be a net lease, and accordingly, the Lessor shall not be entitled to charge, and the Lessee shall not be obligated to pay, any operating costs (or other similar costs or charges) whatsoever for the Premises.

ARTICLE 3 TERM AND TERMINATION

3.1 Term:

- (a) The term of the Agreement shall commence on the Effective Date and, subject to any extension, renewal or earlier termination, shall expire on the expiry or termination of the Power Purchase Agreement, unless terminated earlier in accordance with this Agreement (the “**Term**”).
- (b) For greater certainty, the Term may be extended, renewed or terminated at any time by mutual written agreement of the Parties.

3.2 Termination for Default:

- (a) Either Party may terminate this Agreement on thirty (30) days’ written notice to the other Party (in this Section 3.2(a), the “**Defaulting Party**”) in the event that the Defaulting Party is in default under this Agreement, provided that this Agreement will not terminate if the Defaulting Party remedies such default within that period of time (or such longer period of time as may be reasonably required to remedy the default, given the nature of such default).
- (b) Either Party (in this Section 3.2(b), the “**Non-Defaulting Party**”) may terminate this Agreement immediately upon written notice to the other Party (in this Section 3.2(b), the “**Defaulting Party**”) in the event that:
 - (i) the Defaulting Party violates any Applicable Laws and such violation has a material adverse effect on the business, operations or reputation of the Non-Defaulting Party;
 - (ii) the Defaulting Party is placed into receivership, or becomes insolvent, or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed or presented against the Defaulting Party or if the Defaulting Party takes or proposes to take the benefit of any provision of the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), or any other similar legislation in effect from time to time;
 - (iii) an order is made, resolution passed, or petition filed for the winding up of the Defaulting Party, or the Defaulting Party amalgamates or consolidates with any other person without the prior written consent of the Non-Defaulting Party (not to be unreasonably withheld, conditioned or delayed), or if there is a change of control of the Defaulting Party without the prior written consent of the Non-Defaulting Party (not to be unreasonably withheld, conditioned or delayed), or if the Defaulting Party becomes dissolved or is struck; or
 - (iv) any representation or warranty made in the Agreement by the Defaulting Party is or becomes false, incorrect, or misleading in any material manner.

3.3 Rights and Obligations on Termination:

- (a) Upon the early termination of this Agreement, the Lessee shall decommission, disconnect, uninstall and remove the Equipment from the Premises and restore the Premises to a similar condition as they were in on the Effective Date, reasonable wear and tear excepted. Notwithstanding the foregoing, upon the early

termination of this Agreement, the Lessee may elect (by written notice to the Lessor) to leave any fixtures, additions or improvements forming part of the Equipment and which are in reasonably good working order installed at the Premises, and upon such election, the same shall be deemed to form part of the Premises and shall become the property of the Lessor.

- (b) The expiration or earlier termination of this Agreement shall not relieve nor discharge either Party from any obligation incurred by it prior to the date of expiration or termination, whether incurred under this Agreement or imposed on it by law.
- (c) If a Party terminates this Agreement pursuant to Section 3.2, the non-terminating Party (being a "Defaulting Party" within the meaning of Section 3.2) shall be liable to and, upon demand, shall pay to the terminating Party an amount equal to all losses and/or damages suffered by the terminating Party as a result of the event(s) of default which formed the basis of such termination, including (in the case of a default by the Lessor) all losses and/or damages suffered by the terminating Party pursuant to the Power Purchase Agreement as a result of such default, without duplication.

3.4 Cross-Termination: Any termination of this Agreement shall operate as to concurrently terminate the Power Purchase Agreement, and any termination of the Power Purchase Agreement shall operate as to concurrently terminate this Agreement. If either of the foregoing agreements is terminated due to a default 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, 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.

3.5 Remedies Cumulative: All rights and remedies of a Party, by provision of this Agreement, at law or in equity, are cumulative and not alternative, and such Party may exercise such of them 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 by that Party.

ARTICLE 4
LIABILITY, INDEMNITY AND INSURANCE

4.1 Liability and Indemnity: Each Party (the “**Indemnifying Party**”) shall be liable to and shall indemnify, defend and hold harmless the other Party and its respective directors, officers, employees, contractors, subcontractors, consultants, advisors, insurers, agents, representatives, successors and assigns (each an “**Indemnified Party**”) from and against any and all claims, demands, actions, causes of action, obligations, damages, losses, deficiencies, costs, liabilities and expenses (including all reasonable legal fees on a solicitor and own client basis), disbursements, fines, penalties, suits, proceedings, remediation and clean-up costs, third party claims, governmental claims, strict liability claims and demands of whatever nature, whether arising in contract, tort (including but not limited to negligence and occupiers’ liability) any other legal theory, or in equity, suffered by, imposed upon, sustained or asserted against any Indemnified Party as a result of, in respect of, arising out of, or related to:

- (a) any breach of this Agreement by the Indemnifying Party or any person for whom it is responsible at law;
- (b) any negligence or wilful misconduct by the Indemnifying Party or any person for whom it is responsible at law;
- (c) any loss of life or bodily injury to any person, or loss of, damage to, loss of use of, or theft of any property of any person: (i) in the case of the Lessee as the Indemnifying Party, at the Premises; and (ii) in the case of the Lessor as the Indemnifying Party, at any portion of the Lands or the Building outside the Premises;
- (d) any violation of Applicable Laws by the Indemnifying Party or any person for whom it is responsible at law,

except to the extent that any of the foregoing is caused or contributed to by an Indemnified Party.

4.2 Insurance:

- (a) Throughout the Term, each Party will, at its own cost and without in any way limiting its liability, secure, maintain and keep in force such policies of insurance as are customarily maintained by similar parties from time to time, having regard for the nature of the Lands, the Building and the Premises, the Parties’ respective interests thereon, the Parties’ respective covenants and obligations hereunder, and the Parties’ respective operations at the Lands, the Building and the Premises. The Parties will, from time to time throughout the Term and acting reasonably, agree on all such policies of insurance to be maintained by them.
- (b) Insurance coverage required hereunder will be placed with such insurers licensed to conduct business in the jurisdiction in which the Premises is located. Any policy of insurance to be maintained by a Party shall be placed on such terms and conditions as may be approved by the other Party, acting reasonably, including (where applicable) that:

- (i) insurance policy limits will cover each and every incident on a “per occurrence” basis, with no aggregate or one-off policy limit covering all claims made unless any such aggregate or one-off policy limit is sufficient to cover all claims that may reasonably be expected to be made during the applicable coverage period;
 - (ii) each such policy of insurance maintained by a Party hereunder will be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the other Party; and
 - (iii) each such policy of insurance maintained by a Party hereunder will include the other Party as an additional insured or loss payee (as its interests may appear), and will contain a cross liability and severability of interest endorsements.
- (c) Each Party will provide copies of insurance certificates for any policies of insurance required to be maintained hereunder to the other Party forthwith following the Effective Date and thereafter prior to any change, renewal, or new policy or coverage.
- (d) Except as otherwise agreed by the Parties, each Party will be responsible for the payment of all premium and deductible amounts relating to its own insurance policies, provided that neither Party shall do, permit or suffer to be done anything that may cause the other Party to pay increased or extra premiums on any insurance policy held by the other Party.
- (e) At no time shall any insurance required pursuant to this Agreement provide for less coverage than required by either Party in the Power Purchaser Agreement.

- 4.3 Hazardous Substances: The Lessor acknowledges that the Equipment utilizes certain substances or materials which are defined as hazardous substances (or hazardous materials) pursuant to Applicable Laws (“**Hazardous Substances**”). The Lessor further acknowledges and agrees that the Lessee may bring such Hazardous Substances into the Premises, provided that the Lessee handles, uses and disposes of such Hazardous Substances in accordance with Applicable Laws.

ARTICLE 5 NOTICES

- 5.1 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:
- (a) 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;
 - (b) 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
 - (c) 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 Lessor:



Attention:

E-mail:

To the Lessee:



Attention:

E-mail:

ARTICLE 6 MISCELLANEOUS PROVISIONS

- 6.1 Amendments: This Agreement may not be amended except by an instrument in writing executed by both Parties.
- 6.2 Assignment: Any assignment of the Power Purchase Agreement shall deem this Agreement concurrently assigned. Except as permitted pursuant to the Power Purchase Agreement, neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably withheld, conditioned or delayed.
- 6.3 Conflicts: In the event of any conflict, discrepancy or inconsistency between the provisions of this Agreement and the Power Purchase Agreement (if any), the provisions of the Power Purchase Agreement shall prevail to the extent thereof.
- 6.4 Counterparts and Electronic Delivery: This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. This Agreement shall be considered properly executed and delivered by any Party if executed and transmitted by facsimile, e-mail, or other electronic means to the other Party.
- 6.5 Entire Agreement: This Agreement and the Power Purchase Agreement constitute the entire agreement between the Parties and supersede all prior written communications and agreements, whether written or oral, with respect to the subject matter of this Agreement and the Power Purchase Agreement.
- 6.6 Enurement: This Agreement shall enure to the benefit of and shall be binding on the Parties and their respective successors and permitted assigns.
- 6.7 Further Assurances: Each of the Parties shall execute such further documents and do and perform or cause to be done and performed such further and other acts as may be

necessary or desirable from time to time in order to give full effect to the provisions of this Agreement.

- 6.8 Governing Law and Forum: This Agreement shall be governed by and interpreted in accordance with the laws of the Province of [jurisdiction]. The Parties hereby to the exclusive jurisdiction of the courts of the Province of [jurisdiction] in respect of any dispute arising herefrom.
- 6.9 Independent Legal Advice: Each Party acknowledges that it has had the opportunity to seek independent legal advice with respect to the drafting of this Agreement. If, in connection with the construction of this Agreement, any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any provision of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party, including but not limited to the doctrine of *contra proferentem*, shall not be applicable.
- 6.10 No Waiver: No waiver by either Party of any breach of a term, covenant or condition contained herein will be deemed a waiver of any subsequent breach of the same or another term, covenant or condition. No failure of either Party to insist on strict performance of any term, covenant or condition contained herein will be deemed a waiver of that Party's rights and/or remedies with respect to any breach of such term, covenant or condition.
- 6.11 Representations and Warranties:
- (a) Each Party hereby warrants, represents and agrees that it has fully authority and capacity to enter into this Agreement and that it is not under any disability, restriction or prohibition, either contractual, by force of any applicable law or otherwise, that would inhibit or prevent that Party's right to execute this Agreement or to fully perform the terms and conditions hereof.
 - (b) Each Party acknowledges that the other Party has been induced into entering this Agreement on the basis of the foregoing warranties, representations and agreements. Except for the foregoing, neither Party is relying on any representation or warranty made by the other Party in entering into this Agreement.
- 6.12 Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.
- 6.13 Survival: Provisions of this Agreement which are expressly stated to or by their nature are intended to survive the expiration or earlier termination of this Agreement shall so survive such expiration or termination of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement to be effective as of the Effective Date.

Lessor:

Lessee:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**SCHEDULE 1
(TO LEASE AGREEMENT)**

DESCRIPTION OF LANDS AND PREMISES

Legal Description:



Municipal Address:



Diagram of Building and Premises:

[Insert aerial photo]

**SCHEDULE 2
(TO LEASE AGREEMENT)
RULES AND REGULATIONS**

[To be inserted.]