

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:	Galesburg CUSD 205 JH	Seller:	Clean Energy Design Group, Inc.
Name and Address	Galesburg CUSD 205 932 Harrison Street Galesburg, IL 61402	Name and Address	Clean Energy Design Group, Inc. 1760 Wabash Avenue, #9050 Springfield, IL 62791
Phone	(309) 973-2101	Phone	
Fax		Fax	
E-mail	jasplund@galesburg205.org.	E-mail	dgriffin@cleanenergydesigngroup.com
Premises Ownership	Purchaser [X] owns [] leases the Premises. List Premises Owner, if different from Purchaser: _____	Additional Seller Information	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

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

- Exhibit 1** Basic Terms and Conditions
- Exhibit 2** System Description
- Exhibit 3** Credit Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Form of Memorandum of License

Purchaser: Galesburg CUSD 205

Seller: Clean Energy Design Group, Inc.

Signature: _____

Signature: _____

Printed Name: Dr. John Asplund

Printed Name: Mr. Daniel Griffin

Title: Superintendent

Title: Principal and Co-Founder

Date:

Date:

Exhibit 1
Basic Terms and Conditions

1. **Initial Term:** Fifteen (15) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each (each an “Additional Term”).
3. **Environmental Incentives, Environmental Attributes, Renewable Energy Credits (“RECs”) and Tax Credits:** Accrue to Seller.
4. **Total Contract Price:** \$196,199
5. **Initial Monthly Charge:**
 - a. **Late Payment** (>30 days): See 4(d) of Terms and Conditions
 - b. **Late Payment Interest:** See 4(d) of Terms and Conditions – 2.5% over prime
6. **Annual Escalation Rate:** 1%
7. **Initial PPA Price per kilowatt hour (“kWh”):** \$0.0265
8. **Final PPA Price per kWh:** \$0.03201
9. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Interconnection costs for the System will not exceed \$[N/A] in the aggregate.
 - b. Statutory prevailing wage rates do X do not _____ apply.
 - c. A Performance Guaranty is _____ is not X being provided by Seller, but is X is not _____ being provided by equipment manufacturer.
10. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided, the Contract Price excludes the following:
 - a. Unforeseen groundwork (including excavation and circumvention of underground obstacles). Upgrades or repair to customer or utility electrical infrastructure (including, but not limited to, client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).
 - b. Snow removal, tree trimming, mowing and any landscape improvements.
 - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including, but not limited to, painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - d. Removal of existing lighting, light poles, or concrete light post bases.
 - e. Roof membrane maintenance or reroofing work.
 - f. Structural upgrades to the Improvements, including ADA upgrades.
 - g. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
 - h. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

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11. **SMART Inverter Rebate:** Purchaser assigns all right, title and interest in the Smart Inverter Rebate associated with the distributed generation and Seller shall be entitled to any rebate therefor provided under Subsection 16-107.5(l) of the Public Utilities Act.
12. **Estimated Conditional Satisfaction Date:** Q4-2019
13. **Estimated Commercial Operation Date:** Q4-2019
14. **Estimated System Life:** 25 Years

Exhibit 2
System Description

1. **System Location:** 1480 W Main Street, Galesburg, IL 61401
2. **System Size (DC kW):** 328
3. **Expected First Year Energy Production (kWh):** _____
4. **Expected Annual Energy Degradation (%):** 0.05
5. **Expected Structure:** Ground Mount Roof Mount Parking Structure Other

6. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Seraphim 330W or Tier 1 Equivalent	1

7. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
SolarEdge SE100KUS or Tier 1 Equivalent	1

8. **Facility and System Layout:** See Exhibit 2, Attachment A
9. **Utility:** Ameren Illinois Company [Commonwealth Edison Company/MidAmerican Energy Company]
EPC (engineering, procurement, construction) Services Provider (Tentative): Evergreen Solar Services (ESS), Inc. and/or Clean Energy Design Group (CEDG), Inc.

Exhibit 2
Attachment A:
 Facility and System Layout

An Aerial Photograph of the Facility	See Below
Site Plan of the System	See Below
Delivery Point	See Below
Access Points	See Below

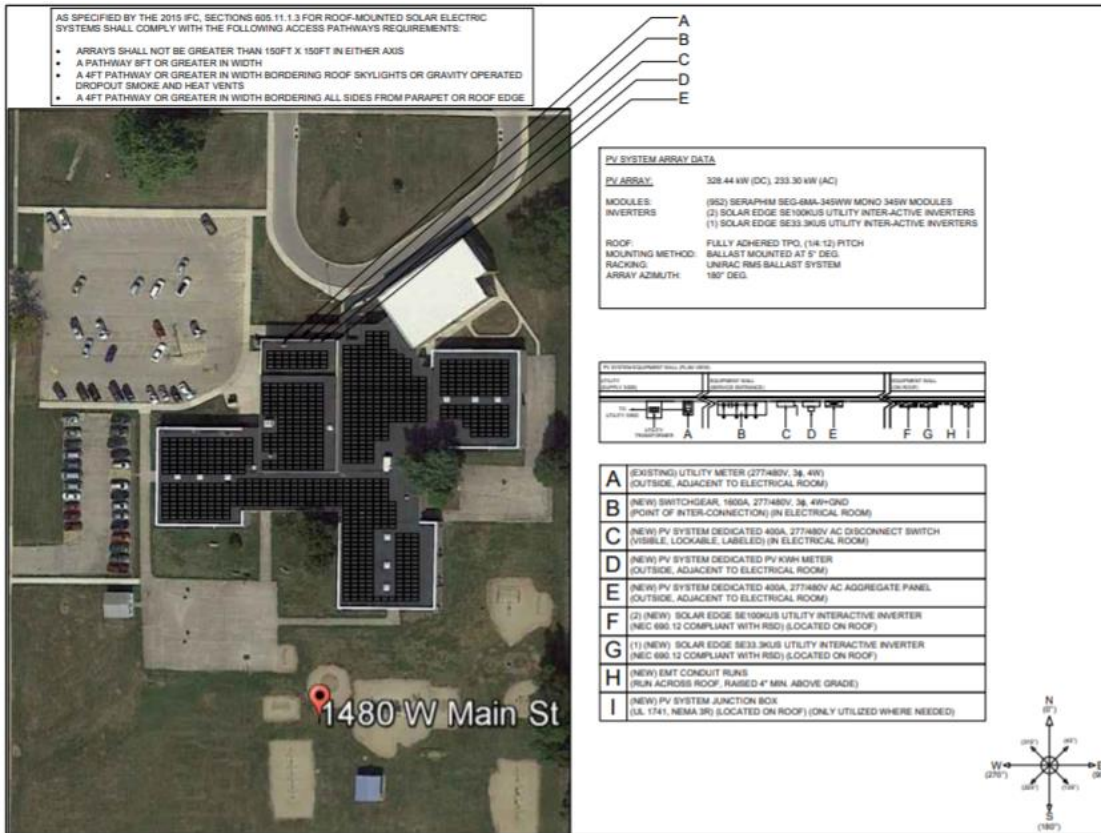


Exhibit 3
Credit Information

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
Name: Galesburg CUSD 205					Tax ID:		
Previous & Other Names: n/a				Website: http://ghs.galesburg205.org			
Corporate Address: 932 Harrison Street,							
City, State, Zip Galesburg, IL 61402							
Phone Number: (309) 973-2101				Fax Number:			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	Inc.	LLP	Other: Elementary School
Property Address for Solar Installation: 1480 W Main Street			City, State: Galesburg, IL	Zip Code: 61401	Property Owned by Applicant [X] YES [] NO		
Property Type Elementary School	Insurance Agent Name To Be Provided		Agents Phone: To Be Provided	Name of Property Owner if Not Applicant n/a			
Information Requested: Please submit the information required below via electronic format to:							
<u>Corporate Records</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> Last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u>							
<input type="checkbox"/> Lease with Premises Fee Owner							
<input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises							
Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.							

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that Seller and its Financing Parties are relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warrant and certify that the information provided herein is true, correct and complete. Seller and its Financing Parties are authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give Seller and its Financing Parties any information they may have about you. You authorize Seller and its Financing Parties to answer questions about their credit experience with you. Subject to any non-disclosure agreement between you and Seller and its Financing Parties, this form and any other information given to Seller and its Financing Parties shall be the property of Seller and its Financing Parties. If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Seller at _____. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller and its Financing Parties are an equal opportunity lender.

Signature: _____ Title: _____ Date: _____

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes, including, but not limited to, and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
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 Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (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 may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed 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. The energy purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller.
3. **Term and Termination.**
 - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, 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 and has permission to operate from the relevant Governmental Authority. 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 from Seller’s contractor and the interconnection or similar 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 on **Exhibit 2**. 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. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current Additional Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The total number of monthly payments during the Initial Term is one hundred and eighty (180). 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, as measured by the System meter.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. 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 and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five dollar (\$25) handling charge will be added to each invoice.
- 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. Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System ("**Seller's Taxes**"). For purposes of this Section 4(d), "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, 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. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Taxes. In the event any sales of electric energy or Environmental Attributes, if any, hereunder are eligible to be exempted from or not subject to one or more Taxes, promptly upon Seller's request therefore Purchaser shall provide Seller with all necessary documentation to obtain such exemption or exclusion at no out of pocket cost to Purchaser.
- d. **Payment Terms.** All amounts due under this Agreement shall begin with the Commercial Operation Date and be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on Exhibit 1, Seller is the owner of, and is entitled to the benefit of, all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include any right to any Environmental Attributes, Environmental Incentives, RECs or Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring to Seller all Environmental Attributes, Environmental Incentives, RECs and Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for the same. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the Environmental Attributes, Environmental Incentives, RECs and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Attributes, Environmental Incentives, RECs and Tax Credits are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Tax Credits or RECs. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"**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 Incentives do not include Environmental Attributes, Tax Credits or RECs.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state Public Utilities Commission), or any arbitrator with authority to bind a party at law.

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System. Tax Credits do not include Environmental Attributes, Environmental Incentives or RECs.

“**REC**” means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Environmental Attributes, Environmental Incentives or Tax Credits.

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. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the “**Premises**”) including, if applicable, geotechnical work, and real estate due diligence which demonstrates the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. 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) 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 new dates, then 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. 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 Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller’s rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the solar lease and easement agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the “**Solar Lease and Easement Agreement**”).

7. Seller’s Rights and Obligations.

a. Permits and Approvals. Seller, with 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. 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 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 contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility 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 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. 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, however, 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. 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 Premises 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 Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM 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.

8. **Purchaser's Rights and Obligations.**

- a. **License to the Premises; Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assigns an irrevocable non-exclusive license running with the Premises (the "**License**") for access

to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. At request of Seller, Purchaser shall execute a Memorandum of License, and which shall be in form and substance set forth **Exhibit 5**, or other form agreed to by the parties. Seller may, at its sole cost and expense, record such Memorandum of License with the appropriate land registry or recorder's office.

- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall maintain the Facility and shall, at its sole cost and expense, maintain the Facility in good condition and repair. Seller may maintain the Facility under an independent Operations & Maintenance Agreement (O&M Agreement) with Seller or through Seller by a third-party under an O&M Agreement. Regardless of an O&M Agreement, Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not permit or cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System or the production of electricity from the System or the Utility grid.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility (including for the avoidance of doubt, to Purchaser's roof structures) 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 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. 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; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes, Environmental Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) 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 such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). 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.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, 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 outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes, Environmental

Incentives, and RECs that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) 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 outage. Determination of the amount of energy that would have been produced during the relocation 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. "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.

- f. **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 attorneys' 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 Section 18.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.
- g. **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 Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **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 Section 8(h) against Purchaser.
- i. **Data Line.** Purchaser shall provide Seller a high-speed Internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **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.**

"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, ordinances, 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, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

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.

10. **Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), 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 One Hundred and Eighty (180) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to a neat and orderly 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, 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. 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. Seller shall have no obligation to restore the Facility to the original contour or restore any improvements demolished and removed from the Facility and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. 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.

11. **Measurement.**

Seller shall install and own 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 or the required standard of the Utility to allow Seller to accurately receive, collect, calculate and transmit meter data for the Utility and calculating production, billing and invoicing purposes. Seller shall maintain the meter(s) in accordance with industry standards.

12. **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 warranty 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 Premises;
 - 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. 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.
- 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 ten (10) 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 Purchaser terminates this contract without cause prior to commencement of System installation, a forty thousand dollars (\$40,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a federal tax rate of twenty one percent (21%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes, Environmental Incentives or RECs that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of 5%) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
 - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of 5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
 - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting

Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

- D. Liquidated Damages. The Parties agree that, if either Party terminates this Agreement prior to the expiration of the Term pursuant to this Section 12, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 12 is a reasonable approximation of the damages suffered by the non-defaulting Party as a result of early termination of this Agreement and is not a penalty.

13. **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 organized, 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 limited liability 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.
- iii. Each Party is acting for its own account and has made its own independent decision to enter into this PPA and is not relying upon the advice or recommendations of the other Party in so doing.
- iv. Each Party represents and warrants that the various terms, obligations, charges and fees contained in this PPA are the result of arm's length transactions, or, to the extent that such charges and fees are not the result of arm's length transactions, represent market rate charges and fees and that the cost to the Seller is equivalent to fair market value.
- v. The Parties are independent and are not representing, endorsed by, or acting on behalf of, a utility, a consumer group, or a governmental body, unless specifically stated otherwise.

- 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. License. Purchaser has title to or a leasehold or other property interest in the Premises that extends beyond the Term of this Agreement. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility 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. If Purchaser is not the fee simple owner of the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License 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 Premises.

14. **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 i) negligence or willful misconduct, or ii) breach of any terms of this Agreement, 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 Initial Term or during any Additional 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 greater of (1) the Fair Market Value of the System and (2) the sum of the amounts described in Section 12.b.iii.A)(1) and Section 12.b.iii.A)(3).
- 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 Initial Term or during any Additional 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 \$2,000,000 per occurrence and \$4,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 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 One Million dollars (\$1,000,000) per occurrence and Two Million dollars (\$2,000,000) 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, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance.

15. **Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, RECs and Tax Credits (unless otherwise specified on Exhibit 1), 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 Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as may be evidenced by a UCC-1 or similar filing by the Seller or any Financing Party. 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 Premises 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 Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

- b. **Ownership of SMART Inverter.** Throughout the Term of this Agreement Purchaser hereby grants all right, title and interest in and to SMART Inverter Rebates consistent with the provisions of 220 ILCS 5/16-107.6 to Seller. The value of the rebates offered will be consistent with the amounts specified in 220 ILCS 5/16-107.6 and with related Orders of the ICC. Seller shall own, operate and control the Smart Inverter associated with the distributed generation that is the subject of the rebate for the purpose of preserving reliability during distribution system reliability events. "SMART Inverter" means a device that converts direct current into alternating current and can autonomously contribute to grid support during excursions from normal operating voltage and frequency conditions by providing each of the following: dynamic reactive and real power support, voltage and frequency ride-through, ramp rate controls, communication systems with ability to accept external commands, and other functions from the electric utility.
- c. **Option to Purchase.** At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- d. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of five percent (5 %)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives, RECs and Tax Credits and factoring in future costs and expenses associated with the System avoided costs. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder. Alternatively, the parties may agree on a stipulated fair market value (FMV) in advance of any purchase option date, conducting and determining these terms stipulated in compliance with federal and state laws, and also meeting all the requirements outlined in the Exhibits and Articles that define this Agreement.

16. **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 attorneys’ fees (collectively, “**Liabilities**”) resulting from i) any third party actions relating to the breach of any representation or warranty set forth in Section 13, and ii) 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, the willful misconduct of, or the breach of the terms of this Agreement by, 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 Section 16(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 16(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 “**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 attorneys’ 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 Section 16(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 Section 16(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 Premises of any Hazardous Substance (as defined in Section 16(c)(i)) 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 Premises 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 Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. “**Hazardous Substance**” means any chemical, waste or other substance (A) 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, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 16 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 Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of

such Environmental Attributes, Environmental Incentives, RECs to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

- ii. Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 16 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 by Purchaser under this Agreement. The provisions of this Section (16)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.
- iii. Any action against Seller must be brought within one (1) year after the cause of action accrues. Any action against Purchaser must be brought within one (1) year after the cause of action accrues.

17. Force Majeure

- a. "**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; lightning; wind; drought; 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.
- b. 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.
- c. 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.
- d. If a Force Majeure event continues for a period of ninety (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).

18. Assignment and Financing

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. 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. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser

has been provided with reasonable proof that the proposed assignee (x) has experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. “**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, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. 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 Section 18(a)(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

19. **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 Section 19(a), except as set forth in Section 19(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 shall retain one (1) copy of the Confidential Information, in a medium of its choosing, for evidentiary, archival and regulatory purposes. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 19(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 Section 19(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 Section 19(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 subpoena (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.

20. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. 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.

21. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Illinois. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. The arbitration proceedings shall be conducted in Santa Rosa, California, before one (1) arbitrator, unless the parties otherwise mutually agree; however, a party may participate by via internet-based videoconferencing. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **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 shall include, without limitation, License to the Premises; Facility Access Rights (Section 8a), No Alteration of Facility (Section 8d), Change in Law (Section 9), Default, Remedies and Damages (Section 12), Representations, Warranties and Covenants (Section 13), Insurance Coverage (Section 14(b)), Indemnification and Limits of Liability(Section 16), Force Majeure (Section 17), Confidentiality and Publicity (Section 19), Choice of Law(Section 21(a)), Arbitration and Attorneys' Fees (b) (Section 21), Notices(Section 21(c)), Comparative Negligence (Section 21(g)), Non-Dedication of Facilities(Section 21(h)), Service Contract (Section 21(j)), No Partnership (Section 21(k)) Entire Agreement, Modification, Invalidity, Counterparts, Captions(Section 21(l)), Forward Contract (Section 21m)) and No Third Party Beneficiaries (Section 21(n)).
- e. **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.
- f. **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.

- g. Comparative 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.
- h. 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 Section 11 of this Agreement.
- i. Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. 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.
- l. Entire Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, 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.
- m. Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. No Third-Party Beneficiaries.** Except for assignees and Financing Parties, permitted under 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.

- o.** Counterparts. The execution page to this Agreement (page one) may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

Exhibit 5
Form of Memorandum of License

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [____], notice is hereby given of that Solar Power Purchase Agreement dated as of [____] for purchase and sale of electrical energy (the “**Solar Agreement**”), such Solar Agreement includes the grant of License to Seller, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Solar Agreement:

Seller: Clean Energy Design Group, Inc.
1760 Wabash Avenue, #9050
Springfield, IL 62791

Purchaser : Galesburg CUSD 205 Steele Elementary
932 Harrison Street
Galesburg, IL 61401

Date of Execution of Solar Agreement: [____]

Description of Premises: See **Exhibit 5, Attachment A**

TERM OF AGREEMENT:

The term of the Solar Agreement shall be until the last day of the calendar month in which the twenty fifth (25th) anniversary of the Commercial Operation Date (as that term is defined in the Solar Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Agreement.

[signature pages follow]

IN WITNESS WHEREOF, this Memorandum of License has been executed and delivered under seal on this _____ day of _____, 2019 .

Seller:

Clean Energy Design Group, Inc.

By: _____

Print Name: Mr. Daniel Griffin

Title: Principal and Co-Founder

Purchaser:

Galesburg CUSD 205

By: _____

Print Name: Dr. John Asplund

Title: Superintendent

[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]

Exhibit 5
Attachment A
Description of the Premises

To Be Provided

End of Exhibit 5

SOLAR FACILITIES SITE LEASE

This Solar Facilities Site Lease (this “Lease”), dated as of _____, 2019 (the “Effective Date”), is entered into by and between [Clean Energy Design Group, Inc.], a Wyoming corporation (“Lessee”), and Galesburg CUSD 205 (“Lessor”). Each of Lessee and Lessor is referred to herein as a “Party” and collectively they are referred to as the “Parties”.

RECITALS

WHEREAS, in order to develop, construct, own, operate and maintain one or more photovoltaic solar energy facilities (individually, on a Parcel (as defined herein) a “Facility” and collectively, the “System”), Lessee requires access to certain property owned or leased by Lessor as identified in Exhibit A hereto (collectively, the “Premises”); and

WHEREAS, in connection with the foregoing, Lessee desires to lease the Premises from Lessor in order to develop, construct, own, operate and maintain the System, and Lessor is willing to grant such lease to Lessee, each on the terms and conditions set forth herein.

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

- 1) **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way to access the Premises across, through, under or over any surrounding or nearby premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary or convenient to develop, construct, own, operate and maintain, or otherwise access, the System or the Premises.
- 2) **Rent.** During the Term of this Lease, Lessee shall pay Lessor the amounts set forth in Exhibit B (the “Rent”) as compensation in full for the rights with respect to the Premises, and such other rights, as set forth in this Lease.
- 3) **System Development, Construction, Ownership, Operation and Maintenance.**
 - (a) Lessor hereby consents to the development, construction, ownership, operation and maintenance of the System and any component thereof by Lessee, its Affiliates and any employees, agents, representatives, subcontractors or other designees of any of the foregoing and any local electric utility personnel, on the Premises, including solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment, utility interconnections and any other equipment or facilities related thereto.
 - (b) Without limitation of the foregoing, Lessee shall also have the right during the Term hereof to access the Premises to:
 - (i) clean, repair, replace and dispose of part or all of any System;

- (ii) access the Premises with guests for promotional purposes during normal business hours and at other times as are acceptable to the Lessor in its reasonable discretion; and
 - (iii) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.
 - (c) Lessor acknowledges that the development, construction, ownership, operation and maintenance of all or a portion of the System may require construction, installation or other work to, above or below the ground and may require physically mounting and adhering the System to buildings or structures on, or fixtures appurtenant to, the Premises, and Lessor hereby consents to all such installation, mounting and adhering.
- 4) **Access to Premises.** Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, construct, own, operate and maintain the System as contemplated herein or in the applicable PPA, including ingress and egress rights to the Premises for Lessee, its Affiliates and any employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, regulators and other designees of any of the foregoing and any local electric utility personnel, and access to the System to interconnect the System with the Premises' electrical wiring. Lessor shall provide such space and access as is reasonably requested by Lessee for laydown, for the temporary storage and staging of tools, materials, parts, supplies and equipment, for rigging and material handling, for the parking of vehicles and temporary trailers and facilities and for erecting an office or other structure, in each case as reasonably necessary or convenient for the development, construction, ownership, operation, and maintenance of the System or any portion thereof. Lessor and its authorized representatives shall at all times have access to, and the right to observe, the development, construction, ownership, operation and maintenance of the System on the Premises, subject to compliance with Lessee's safety rules; provided, however, that Lessor shall not interfere with the development, construction, ownership, operation and maintenance of the System or handle any Lessee equipment or the System without written authorization from Lessee.
- 5) **System and Output Ownership.**
- (a) Lessor acknowledges and agrees that (i) Lessee or one of its Affiliates is and shall be the exclusive owner and operator of the System, (ii) all equipment and facilities comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises, and (iii) Lessor shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be mounted on, adhered to or attached to the Premises or structures, buildings and fixtures on the Premises.

- (b) As between Lessor and Lessee, Lessor acknowledges that Lessee or one of its Affiliates is and shall be the exclusive owner of all Energy Output of the System, of all Environmental Attributes related to the System and of any other tax or financial incentives related to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any such Energy Output, Environmental Attributes or tax or financial incentives.

6) **Representations and Warranties, Covenants of Lessor.**

- (a) Powers; Authorization. Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessor represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) Binding Obligation. Lessor represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.
- (d) Lessor's Title to Premises. Lessor represents, warrants and covenants that Lessor has lawful title to the Premises and that Lessee shall have quiet and peaceful possession of the Premises in accordance with this Lease, free from any claim of any Person of superior title thereto, without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least fifteen (15) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in this Lease shall run with the Premises and survive any such transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or party to whom a lien has been granted to execute and deliver to Lessee a document in form and substance satisfactory to Lessee, pursuant to which such party (i) acknowledges and consents to the Lessee's rights in the Premises as set forth herein, including an acknowledgement by the transferee that it has no interest in the System, the Energy Output, the Environmental Attributes or any other tax or financial incentive relating thereto, and shall not gain any interest in any of the foregoing by virtue of the Lessor's

transfer, and (ii) expressly subordinates any lien it may have in and to any of the foregoing to Lessee's rights and interests hereunder.

- (e) No Interference With and Protection of System. Lessor will not conduct activities on, in, under, over or about the Premises, the System or any portion thereof that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessor shall take all reasonable steps to limit access to the Premises to Lessee and Persons entitled to access the Premises on Lessee's behalf pursuant to this Lease. Lessor shall cooperate with Lessee to allow Lessee to implement and maintain reasonable and appropriate security measures on the Premises to prevent Lessor's employees, invitees, agents and representatives, any third parties and animals, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- (f) Maintenance of Premises. Lessor shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises). Lessor shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.
- (g) Utilities. Lessor shall provide Lessee with Station Power during the Term of this Lease.
- (h) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor. Without limiting the foregoing, Lessor shall not (i) construct or otherwise permit to exist any structure on the Premises or any other real property owned by, leased to or from, or otherwise controlled by Lessor (except for structures, if any, existing on the Premises as of the Effective Date), (ii) permit the growth of foliage, or (iii) emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, in each case that could adversely affect insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could adversely affect insolation levels at the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing insolation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (A) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(h), (B) an award of damages would be inadequate to remedy such a breach, and (C) Lessee shall be entitled to equitable

relief, including specific performance, to compel compliance with the provisions of this Section 6(h).

- (i) Hazardous Materials. To the best of Lessor's knowledge, there are no hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises in violation of any Applicable Law or that might otherwise impair Lessee's ability to utilize the Premises as contemplated by this Lease. Lessor shall not introduce or use any hazardous, toxic or dangerous substances, chemicals, materials or wastes on, in, under or over the Premises in violation of any Applicable Law. If Lessor becomes aware of any hazardous, toxic or dangerous substances, chemicals, materials or wastes present on, in, under or over the Premises, Lessor shall promptly notify Lessee of the type and location of such substances, chemicals, materials or wastes in writing. Lessor agrees to assume full responsibility for (and shall protect, indemnify and defend the Lessee Indemnitees against) any liability or cleanup obligations for, and any interference with the operation of the System by, any such substances, chemicals, materials or wastes on, in, under or over the Premises, unless directly caused by the actions of Lessee.
- (j) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements that would (i) materially increase the cost of developing, constructing, owning, operating or maintaining the System at the planned locations on the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (ii) adversely affect the ability of the System as designed to produce Energy once installed.

7) **Representations and Warranties, Covenants of Lessee.**

- (a) Powers; Authorization. Lessee represents and warrants that it has all requisite power and authority to enter into this Lease, and to carry out the transactions contemplated hereby, and that it has taken all necessary actions to authorize the execution, delivery and performance of this Lease.
- (b) No Conflict. Lessee represents and warrants that the execution, delivery and performance by it of this Lease does not (i) violate (A) its organizational documents, or (B) any Applicable Law, or (ii) require any approval or consent of any other Person, except for such approvals or consents that have been obtained on or before the date hereof or the absence of which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on its ability to execute, deliver or perform this Lease.
- (c) Binding Obligation. Lessee represents and warrants that this Lease has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with the terms hereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws

relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

- (d) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law. If Lessee becomes aware of any such hazardous, toxic or dangerous materials on, in, under or over the Premises, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and shall protect, indemnify and defend Lessor Indemnitees against) any liability or cleanup obligations for any hazardous, toxic or dangerous materials on, in, under or over the Premises in violation of any Applicable Law that are directly caused by the actions of Lessee.

8) Term and Termination

- (a) Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall be in effect until the fifteenth (15th) anniversary of the date a Facility on a Parcel achieves commercial operation under the applicable PPA, unless terminated earlier or extended in accordance with this Lease. Thereafter, the Term shall automatically extend for two (2) consecutive periods of five (5) years each, unless earlier terminated in accordance herewith. In addition, the then-current term of this Lease shall be extended if, and for the same period that, a related PPA is extended as a result of Force Majeure thereunder. A Term shall be calculated for each Parcel. Without limiting any other provisions of this Lease, Lessee may terminate this Lease in Lessee's sole discretion at any time upon three (3) months' written notice to Lessor without triggering the Event of Default provisions of Section 15 or incurring any liability under this Agreement whatsoever.
- (b) Removal of System at End of Term. Subject to any contrary provision in any PPA, Lessee shall be entitled, within one hundred eighty (180) days following the end of the Term, and at Lessee's cost and expense, to decommission, deconstruct, dismantle and remove the System from the Premises. During such one hundred eighty (180) day period, Lessee, its Affiliates and any employees, agents, representatives, contractors, subcontractors and other designees of any of the foregoing and any local electric utility personnel shall continue to have access to the Premises and the System as otherwise provided in this Lease, without payment of further Rent or other consideration, for purposes of such decommissioning, deconstruction, dismantling and removal.

9) Insurance

- (a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party will name and endorse the other Party as an additional insured in each such policy. For the avoidance of

doubt, Lessee's property insurance shall cover the System and Lessor's property insurance shall cover the Premises.

- (b) Lessor shall provide and maintain insurance against any System Loss caused by the negligence or willful misconduct of Lessor or any of its employees, invitees, agents and representatives, not including business interruption insurance, in an amount not less than \$1,000,000, with loss payable to Lessee. The period of indemnity shall not be less than twelve (12) months. Each policy shall waive the insurer's right of subrogation, except that Lessor's policy shall provide that in the event of casualty or loss at the Premises affecting the System, Lessee's property insurer may proceed against the Lessor's insurer. Any such policies of insurance shall expressly provide that such insurance as to Lessee shall not be invalidated by any act, omission or neglect of Lessor and cannot be canceled without ten (10) Business Days' prior written notice to Lessee. As to each such policy, Lessor shall furnish to Lessee a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 9. In the event that Lessor is, notwithstanding the use of its commercially reasonable efforts, unable to obtain the insurance required by this Section 9, Lessee shall be entitled to obtain such insurance at Lessor's cost and expense. Lessor shall, promptly upon demand therefor from Lessee, reimburse Lessee for the full cost and expense of any such insurance that is obtained by Lessee.
 - (c) The provisions of this Lease shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties hereunder shall not be limited or reduced by insurance.
- 10) Taxes.** Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof). Lessor shall pay all (a) real and personal property taxes relating to the Premises, (b) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (c) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (d) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.
- 11) Liability and Indemnity.**
- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless, Lessor, its Affiliates, and any officers, agents and employees of any of the foregoing (the "Lessor Indemnitees") from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessor, and damage or destruction of property, including property of Lessor, any utility company or Lessor, arising out of (i) the gross negligence or willful misconduct

of Lessee, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessee or its Affiliates; or (ii) the material breach by Lessee of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessor Indemnitee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Section 11(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of any Lessor Indemnitee or the acts of third parties. Lessee shall pay any cost that may be incurred by any Lessor Indemnitee in enforcing this indemnity, including reasonable attorneys' fees.

- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its Affiliates, and any officers, agents and employees of any of the foregoing (the "Lessee Indemnitees") from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including employees of Lessee, and damage or destruction of property, including property of Lessee, any utility company or Lessee, arising out of (i) the gross negligence or willful misconduct of Lessor, its Affiliates or any employees, agents, representatives, contractors or subcontractors of any of Lessor or its Affiliates; or (ii) the material breach by Lessor of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all reasonable costs incurred by any Lessee Indemnitee in defending such claims, demands, lawsuits or actions, including attorney, witness and expert witness fees, and any other litigation related expenses. Lessor's obligations pursuant to this Section 11(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of any Lessee Indemnitee or the acts of third parties. Lessor shall pay any cost that may be incurred by any Lessee Indemnitee in enforcing this indemnity, including reasonable attorneys' fees.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Lease.

12) Casualty or Condemnation; Force Majeure.

- (a) In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor, effective as of a date specified in such notice. If Lessee does not elect to

terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction; provided, however, that, except as otherwise provided in this Lease (including Section 9 and Section 11(b)), Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by Applicable Law for its respective property interest appropriated as well as any damages suffered thereby.

- (b) To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Lease and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this Lease (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations hereunder; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure (other than the obligation to make payments then due or becoming due, and except as otherwise provided in Sections 9 and 11).

13) Assignment.

- (a) Neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed; provided, however, that Lessee may, in its sole discretion, without the consent of Lessor, assign any of its rights, duties or obligations under this Lease to (i) one or more parties providing financing or refinancing in connection with the development, construction, ownership, operation or maintenance of the System, or any representative of such parties, (ii) any present or future purchaser(s) of all or any portion of the Energy Output or Environmental Attributes, (iii) any Person succeeding to all or substantially all of the assets of Lessee, or (iv) a successor entity in a merger or acquisition transaction. For the avoidance of doubt, changes in control of Lessee shall not be deemed to be assignments of this Lease.
- (b) In addition to the foregoing, Lessee may, in its sole discretion, without the consent of Lessor, assign its rights and obligations hereunder with respect to all or a portion of the Premises to any of its Affiliates. In the event that Lessee assigns

its rights and obligations hereunder with respect to a portion of the Premises (the “Assigned Portion”) to any of its Affiliates (the “Assigned Portion Affiliate”) then, if Lessee or such Affiliate so requests, Lessor shall execute (i) with Lessee, an amendment to this Lease reflecting the removal of the Assigned Portion from the Premises for purposes of this Lease, and (ii) with the Assigned Portion Affiliate, a new lease agreement (the “Assigned Portion Lease”) in the form of, and on the same term and conditions set forth in, this Lease. Upon execution of the Assigned Portion Lease, Lessee shall have no obligations in respect of the Assigned Portion and the Assigned Portion Affiliate shall have no obligations in respect of the remaining Premises subject to this Lease.

- (c) Any assignee of Lessee (other than any financing party or any representative thereof to whom this Lease is assigned in connection with the foregoing Section 13(a)(i) or any Assigned Portion Affiliate that has executed an Assigned Portion Lease) or Lessor agrees to assume the obligations of the assignor under, and to be bound by the terms of, this Lease to the extent of such assignment.

14) Cooperation with Financing. Lessor acknowledges that Lessee may be financing or refinancing all or a portion of the development, construction, ownership, operation or maintenance of the System. Lessor agrees that it shall cooperate with Lessee and its financing parties in connection with any such financing or refinancing, including (a) furnishing of such information, (b) giving such certificates, (c) executing such consents to collateral assignment, (d) providing such opinions of counsel, and (e) taking such other actions, in each case as Lessee and its financing parties may reasonably request; provided, however, that the foregoing undertaking shall not obligate Lessor to materially change any rights or benefits, or materially increase any obligations of Lessor, under this Lease (except for providing notices, additional cure periods and other customary rights and protections to the financing parties or their representative as such financing parties may reasonably request).

15) Defaults and Remedies.

- (a) Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:
 - (i) the failure to make, when due, any payment required under this Lease if such failure is not remedied within ten (10) Business Days after the receipt by the Defaulting Party of a Notice of Default;
 - (ii) the failure to perform any material covenant or obligation set forth in this Lease (except to the extent constituting a separate Event of Default), if such failure is not cured within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if

the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;

- (iii) any representation or warranty of the Defaulting Party is untrue or inaccurate in any material respect, which untruth or inaccuracy has a material adverse effect on the other Party, and the Defaulting Party fails to cure such material adverse effect within thirty (30) days after the receipt by the Defaulting Party of a Notice of Default; provided, however, that if the nature or extent of the obligation or obligations is such that, with the exercise of commercially reasonable diligence, more than thirty (30) days are required to effect such cure, then such thirty (30) day period shall be extended (up to a maximum of one hundred twenty (120) days in total) if the Defaulting Party commences to cure within such thirty (30) day period and thereafter pursues the same to completion with commercially reasonable diligence;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party fails to provide or maintain in full force and effect any insurance required under this Lease, if such failure is not remedied within thirty (30) calendar days after receipt by the Defaulting Party of a Notice of Default;
 - (vi) Lessor makes a transfer or assignment of its rights under this Lease other than in accordance with the terms and conditions hereof; or
 - (vii) without limitation of any of the foregoing, Lessor fails to perform any covenant or obligation set forth in this Lease, failure which materially interferes with the System's development, construction, ownership, operation or maintenance of the System for more than thirty (30) consecutive days.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts.
- (c) Remedies. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease, all of which remedies shall be cumulative. Such remedies shall include the right of the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights

therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

16) Dispute Resolution.

(a) Notice of Dispute/Negotiated Resolution. In the event of any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the ten (10) Business Day period following such written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.

(b) Arbitration.

In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties during the ten (10) Business Day period of good faith negotiations provided for above, then either Party may submit such controversy, claim or dispute for arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the JAMS Comprehensive Arbitration Rules and Procedures (“JAMS Rules”); provided, however, that notwithstanding any provisions of such JAMS Rules, the Parties shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided by applicable law, as and to the extent that the arbitrator deems fair and reasonable. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitrator shall have no authority to award any relief that could not be awarded by a court applying the laws of the state in which the Premises are located. The decision of the arbitrator shall be final, binding, and non-appealable except for fraud.

Any Party desiring arbitration shall serve on the other Party and regional office of JAMS closest to Santa Rosa, California, in accordance with the JAMS Rules, its Notice of Intent to Arbitrate (“Notice of Intent to Arbitrate”). The Notice of Intent to Arbitrate shall be served after the ten (10) Business Day period described in Section 16(a), but within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

A single, neutral arbitrator shall be selected by the Parties, who is generally familiar with the factual and legal issues that relate to leasing of real property for

the development, construction, ownership, operation and maintenance of solar energy facilities. In the event that the Parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the AAA Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration.

If a controversy, claim or dispute arises between the Parties that is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the Parties and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, such third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party must be a party to an agreement with any of the parties that provides for arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

All arbitration proceedings shall be held in Santa Rosa, California. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

- (c) Acknowledgment of Arbitration. EACH PARTY UNDERSTANDS THAT THIS LEASE CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE OR NEED OF INTERPRETATION PERTAINING TO THIS LEASE. AFTER SIGNING THIS LEASE. EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE AND THAT IS COVERED BY THE ARBITRATION PROVISION. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO IMPARTIAL ARBITRATION AS SET FORTH IN THIS LEASE.

17) Miscellaneous.

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

hand delivery, overnight delivery, or facsimile. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section. Initial addresses for notice shall be as follows:

Lessor:

Galesburg CUSD 205
932 Harrison Street
Galesburg, IL 61402

With a copy to:

Dr. John Asplund
Galesburg CUSD 205
932 Harrison Street
Galesburg, IL 61402

Lessee:

Clean Energy Design Group, Inc.
1760 Wabash Avenue, #9050
Springfield, IL 62791
Attn: Mr. Daniel Griffin, Principal and Co-Founder
Email: dgriffin@cleanenergydesigngroup.com

- 18) **Governing Law/Venue.** This Lease will be governed by the laws of the State of Illinois without giving effect to principles of conflicts of laws that would require the application of the law of another jurisdiction.
- 19) **Entire Agreement; Amendments.** This Lease and, if applicable, any PPA between Lessor and Lessee (including the exhibits, any written schedules, supplements or amendments hereto or thereto) constitute the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof or thereof. Any amendment, modification or change to this Lease will be void unless in writing and signed by both Parties.
- 20) **Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.
- 21) **Severability.** If any part, term, or provision of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease, and shall not render this Lease unenforceable

or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Lease will remain in full force.

- 22) **No Third Party Beneficiaries**. Nothing in this Lease will provide any benefit to any third party or entitle any third party (other than any Lessor Indemnitee or Lessee Indemnitee) to any claim, cause of action, remedy or right of any kind.
- 23) **No Recourse to Affiliates**. This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 24) **Relationships of Parties**. This Lease shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.
- 25) **Attorneys' Fees**. If any arbitration or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such arbitration or proceeding or enforcing any decision granted therein.
- 26) **Counterparts**. This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Lease received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.
- 27) **Further Assurances**. The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Lease.
- 28) **Construction of Agreement**. This Lease and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against both Parties and shall further be construed and interpreted without reference to the identity of the Party preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Lease or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

29) **Exhibits and Schedules; Headings; Defined Terms.** Any and all exhibits and schedules referenced herein or attached hereto are hereby incorporated into this Lease by reference. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Capitalized terms used herein shall have the corresponding meanings given to such terms in Exhibit C.

30) **Survival.** The provisions of Sections 8, 11, 12,14, 15, 16 and 17 hereof will survive any expiration or termination of this Lease.

31) **Estoppel.** Either Party, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party:

- (a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (b) whether or not to the knowledge of such Party there are then existing any defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
- (c) such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to the facts contained in the certificate.

32) **Confidentiality.**

- (a) Each Party (the "Receiving Party") will hold in confidence any information concerning the affairs of the other Party (the "Disclosing Party") and will not disclose, publish or make use of such information unless (A) the Disclosing Party agrees in writing to the release of such information, the Receiving Party can establish that the information was generally available in the public domain at the time of such disclosure or was developed independently by the Disclosing Party, or such data or information is required by Applicable Law to be disclosed; provided, however, that such disclosure will be made only to the extent required by Applicable Law and, to the extent permitted by Applicable Law, only after providing the Disclosing Party with prior written notice. Notwithstanding the foregoing, each Party agrees that the other Party may disclose such data and information to its officers, directors, employees, agents, representatives, subcontractors, lenders, investors, potential lenders or potential investors, on a "need to know" basis; provided, however, that such officers, directors, employees, agents, representatives and subcontractors will be advised of the confidentiality

provisions hereof. Upon any termination or expiration of this Lease, the Receiving Party will promptly return to the Disclosing Party all such data and information in the Receiving Party's possession (or in the possession of any other person or entity permitted hereby to possess such information pursuant hereto) at such time, unless otherwise directed by the Disclosing Party.

(b) The obligations of the Parties under this Section will survive for a period of two (2) years from and after the termination of this Lease.

33) Waiver of Sovereign Immunity. Lessor hereby irrevocably and unconditionally agrees that, to the extent that it, or any of its assets has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, to enforce any liability or obligation related to or arising from this Lease, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives any such immunity to the extent permitted by Applicable Law, and agrees not to assert any such right or claim in any such proceedings.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

Attest:

Galesburg CUSD 205, Lessor:

By: _____
Name: Dr. John Asplund
Title: Superintendent

Clean Energy Design Group, Inc., Lessee

By: _____
Name: Mr. Daniel Griffin
Title: Principal and Co-Founder

EXHIBIT A

Description of Premises

The Premises consist of the parcels described below (each, a “Parcel”), each owned, operated and managed by Lessor in and around the city of Galesburg, Illinois. All of the Premises will be leased to Lessee for the purpose of developing, constructing, owning, operating and maintaining the System, and as otherwise described in the Lease.

Parcel Designation	Description	Location
	___ Acres	1480 W Main Street Galesburg, IL 61401

EXHIBIT B

RENT

Lessee shall pay Rent to Lessor according to the following schedule:

\$500 per year, \$41.67 per month

EXHIBIT C

SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

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

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

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Assigned Portion” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Affiliate” shall have the meaning ascribed in Section 13(b).

“Assigned Portion Lease” shall have the meaning ascribed in Section 13(b).

“Bankrupt” means that a Person: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (g) has insolvency, receivership, reorganization, bankruptcy, or similar proceedings commenced against it and such proceedings remain undismissed or unstayed for a period of ninety (90) days.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means a calendar day excluding Saturdays, Sundays and days that are official holidays of the United States or the State of Maryland.

“Claiming Party” shall have the meaning ascribed in Section 12(b).

“Defaulting Party” shall have the meaning ascribed to it in Section 15(a).

“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under a PPA.

“Disclosing Party” shall have the meaning ascribed to it in Section 17(q).

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

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Output” means the amount of electrical energy generated by the System and delivered to the applicable Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Applicable Law, and to a federal or state agency or any other Person at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future Applicable Law, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

“Event of Default” shall have the meaning ascribed to it in Section 15(a).

“Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Lease, which event or circumstance is not within the reasonable control, or the result of the negligence, of the Claiming Party. Economic hardship of either Party shall not constitute Force Majeure.

“Insolation” shall have the meaning ascribed to it in Section 6(h).

“JAMS Rules” shall have the meaning ascribed to it in Section 16(b)(i).

“Lease” shall have the meaning ascribed to it in the preamble.

“Lessee” shall have the meaning ascribed to it in the preamble.

“Lessee Indemnitees” shall have the meaning ascribed to it in Section 11(b).

“Lessor” shall have the meaning ascribed to it in the preamble.

“Lessor Indemnitees” shall have the meaning ascribed to it in Section 11(a).

“Lessor’s Landlord” shall have the meaning ascribed to it in Section 6(d).

“Metering Device” means any and all meters at or before any Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

“Notice of Default” shall have the meaning ascribed to it in Section 14(b).

“Notice of Intent to Arbitrate” shall have the meaning ascribed to it in Section 15(b)(ii).

“Parcel” shall have the meaning ascribed to it in Exhibit A.

“Party” and “Parties” shall have the meaning ascribed to it in the preamble.

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

“PPA” means a power purchase agreement entered into between Lessee and another Person, pursuant to which Lessee sells all or any portion of the Electrical Output or all or any portion of the Environmental Attributes to such other Person.

“Premises” shall have the meaning ascribed to it in the recitals.

“Receiving Party” shall have the meaning ascribed to it in Section 17(g).

“Rent” shall have the meaning ascribed to it in Section 2.

“Station Power” means electric energy consumed in the start-up and operation of the System, as distinct from the alternating current output of the System.

“System” shall have the meaning ascribed to it in the recitals.

“System Loss” means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty and condemnation) other than (a) Lessee’s negligence or intentional misconduct, (b) Lessee’s breach of maintenance obligations under the PPA, or (c) normal wear and tear of the System.

“Term” shall have the meaning ascribed to it in Section 8(a).

2) Rules of Interpretation. In this Lease, unless expressly provided otherwise:

- a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Lease and a reference to a recital, Article, Section, subsection or paragraph of this Lease or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Lease or other agreement in which it is used unless otherwise stated;
- b) references to this Lease, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- d) a reference to this Lease, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Lease or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person’s executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) “including” means “including, but not limited to,” and other forms of the verb “to include” are to be interpreted similarly;
- j) references to “or” shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”);
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this Lease expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

- n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;
- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) a reference to time is a reference to the time in effect in Washington, DC on the relevant date; and
- q) if a payment prescribed under this Lease to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day.