



# SOLAR SERVICES AGREEMENT

## Requested Items from Host to Solaris Energy (required for construction of solar system):

- ☐ Read the Solar Host Guidebook
- ☐ Sign the Solar Service Agreement (SSA/PPA)
- ☐ Sign and Notarize the Memorandum of License (MoL)
- ☐ Obtain and Provide Insurance Certificate

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## Solar Services Agreement

This Solar Services Agreement along with all necessary Exhibits (this **"Agreement"**) is entered into by the parties listed below (each a **"Party"** and collectively the **"Parties"**) as of the last date signed by a Party below (the **"Effective Date"**).

<b>Purchaser:</b>		<b>Seller:</b>	
<b>Name and Address</b>	County Of Santa Barbara 260 N San Antonio Rd. Santa Barbara, CA 93110 Attention: Brandon Kaysen	<b>Name and Address</b>	SBC Foster Rd Campus Renewable Energy, LLC 430 North College Ave., Suite 440 Fort Collins, CO 80524 Attention: Nick Perugini
<b>Phone</b>	805-621-1135	<b>Phone</b>	(970) 279-3137 office
<b>E-mail</b>	BKaysen@countyofsb.org	<b>E-mail</b>	Nick.Perugini@SolarisEnergy.com
<b>Premises Ownership</b>	Purchaser owns the Premises of:  812 W Foster Rd., Santa Maria, CA 93455 (APN 111-231-004)	<b>Additional Seller Information</b>	Contact during development and contracting: Shaun Laughlin, VP Strategic Partnerships, Solaris Energy, Inc. 303-883-9003 Shaun.Laughlin@SolarisEnergy.com  Contact during construction: Nick Francis, Solaris Energy, Inc. Director of Project Operations and Development 970-426-6359 Nick.Francis@SolarisEnergy.com
<b>Tax Status</b>	Non profit		For-Profit Entity (LLC)
<b>Project Name</b>	SBC Foster Rd Campus		

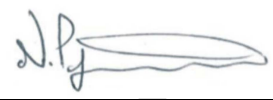
This Agreement sets forth the terms and conditions of the design, installation, operation and maintenance of the turnkey solar panel system described in **Exhibit 2**, the ("**System**") to be installed at the Purchaser's real property located at 812 W Foster Rd., Santa Maria, CA 93455 (APN 111-231-004) (the "Property" or "Premises"). The specified area within the Property on which the System is to be located is depicted on Attachment A to Exhibit 2 of this Agreement ("System Site").

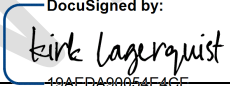
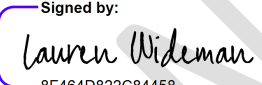
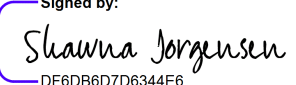
The exhibits listed below are incorporated by reference and made part of this Agreement.


<b><u>Exhibit 1</u></b>	Basic Terms and Conditions
<b><u>Exhibit 2</u></b>	System Description
<b><u>Exhibit 3</u></b>	Intentionally Omitted
<b><u>Exhibit 4</u></b>	General Terms and Conditions
<b><u>Exhibit 5</u></b>	Description of Premises
<b><u>Exhibit 6</u></b>	<b>Form of Memorandum of License Agreement</b>

\* SIGNATURE PAGE FOLLOWS \*

The signatories below represent and warrant that they have full legal right and authority to execute and enter into this Agreement and bind their Party on upon execution of this Agreement.

<b>Purchaser:</b>	County Of Santa Barbara	<b>Seller:</b>	SBC Foster Rd Campus Renewable Energy, LLC
<b>Printed Name:</b>	Laura Capps	<b>Printed Name:</b>	Nicholas Perugini
<b>Title:</b>	Chair of the Board of Supervisors	<b>Title:</b>	Manager
<b>Signature:</b>		<b>Signature:</b>	
<b>Date:</b>		<b>Date:</b>	8-15-2025

<b>Attest:</b>		<b>Recommended for Approval:</b>	
<b>Printed Name:</b>	Mona Miyasato	<b>Printed Name:</b>	Kirk Lagerquist
<b>Title:</b>	County Executive Officer, Clerk of the Board	<b>Title:</b>	Director, General Services Department
<b>Signature:</b>		<b>Signature:</b>	<small>DocuSigned by:</small>  <small>19AEDA90054E46E...</small>
<b>APPROVED AS TO FORM:</b>		<b>APPROVED AS TO ACCOUNTING FORM:</b>	
<b>Printed Name:</b>	Rachel Van Mullem	<b>Printed Name:</b>	Betsy M. Schaffer, CPA
<b>Title:</b>	County Counsel, County of Santa Barbara	<b>Title:</b>	Auditor-Controller, County of Santa Barbara
<b>Signature:</b>	<small>Signed by:</small>  <small>8F464D822C84458...</small> Deputy County Counsel	<b>Signature:</b>	<small>Signed by:</small>  <small>DE6DB6D7D6344E6...</small> Deputy

<b>APPROVED AS TO FORM:</b>	
<b>Printed Name:</b>	Gregory Milligan, ARM
<b>Title:</b>	Risk Manager
<b>Signature:</b>	<small>Signed by:</small>  <small>05F555F00269468...</small> Risk Management


## Exhibit 1: Basic Terms and Conditions

1. **Effective Date:** as of the last date signed by a Party above.
2. **Term:** The Term of this Agreement shall commence as of the Effective Date and expire on the date that is 180 days after the expiration or termination of the Performance Period (see Exhibit 4, Section 10) and all Additional Performance Periods, if any, unless earlier terminated in accordance with the provisions of this Agreement.
3. **Performance Period:** Twenty-five (25) years, beginning on the Commercial Operation Date.
4. **Optional Additional Performance Periods:** Up to three (3) Additional Performance Periods of five (5) years each.
5. **A) Environmental Attributes (defined below):** Accrue to Purchaser.  
**B) Tax Incentives (defined below):** Accrue to Seller.
6. **Santa Barbara County Administrative Fee payment by Seller to Purchaser:** \$75,000.00 further defined in Exhibit 4, paragraph 4.a.
7. **Contract Price:**

Contract Year	PPA/SSA Rate \$ per Solar kWh	Escalation Over Prior Year	Estimated Annual kWh Payment
1	\$0.2940	0%	\$362,354
2	\$0.2940	0.00%	\$360,542
3	\$0.2940	0.00%	\$358,739
4	\$0.2940	0.00%	\$356,946
5	\$0.2940	0.00%	\$355,161
6	\$0.2940	0.00%	\$353,385
7	\$0.2940	0.00%	\$351,618
8	\$0.2940	0.00%	\$349,860
9	\$0.2940	0.00%	\$348,111
10	\$0.2940	0.00%	\$346,370
11	\$0.2940	0.00%	\$344,638
12	\$0.2940	0.00%	\$342,915
13	\$0.2940	0.00%	\$341,201
14	\$0.2940	0.00%	\$339,495
15	\$0.2940	0.00%	\$337,797
16	\$0.2940	0.00%	\$336,108
17	\$0.2940	0.00%	\$334,428
18	\$0.2940	0.00%	\$332,755
19	\$0.2940	0.00%	\$331,092
20	\$0.2940	0.00%	\$329,436
21	\$0.2940	0.00%	\$327,789
22	\$0.2940	0.00%	\$326,150
23	\$0.2940	0.00%	\$324,519
24	\$0.2940	0.00%	\$322,897
25	\$0.2940	0.00%	\$321,282

- a.
- b. For any changes to the scope of work described in Exhibit 1 or Exhibit 2 that are eligible for Tax Incentives, the Contract Price will be adjusted from the first dollar, by \$0.0050 per kWh for every One Hundred Thousand Dollars (\$100,000) or portion thereof in the EPC Contractor's additional costs. For any changes to the Scope of Work described in Exhibit 1 or Exhibit 2 that are not eligible for Tax Incentives, the Contract Price will be adjusted from the first dollar, by \$0.0090 per kWh for every One Hundred Thousand Dollars (\$100,000) or portion thereof in the EPC Contractor's additional costs.

**8. Anticipated NEM2A Final Submission Date:** February 14, 2027

**9. Commercial Operation Deadline:** December 31, 2026

**10. Contract Price Assumptions.** The Contract Price is based on the following assumptions:

- a. A payment or performance bond is not being issued to Purchaser under this Agreement.
- b. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
- c. All prices in this Agreement are calculated based on an upfront rebate of \$0.00.
- d. The Contract Price is inclusive of Seller's Taxes (as defined in Section 4.f. of Exhibit 4) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).
- e. The Contract Price requires a 40% Investment Tax Credit ("ITC") to Seller which includes a 10% Energy Community ITC adder. Any negative change in ITC expectations shall be communicated immediately and is subject to Exhibit 4, Section 17 Change in Law.

**11. Purchaser Options to Purchase System.** As set forth in Section 15.b. of Exhibit 4.

**12. System Installation, Operation, Maintenance, Rebate Applications, and Paperwork Processing Pricing:**

<b>Includes:</b>	<p>[X] Design, engineering, permitting, procurement, installation, monitoring, interconnection application and paperwork processing for the System.</p> <p>[X] Any like substantive equipment, in the sole discretion of the Seller.</p> <p>System installation to be performed by Opterra Energy Services, LLC ("Opterra") pursuant to an agreement between Seller and Opterra. Seller shall at all times be fully responsible for the performance of the work by Opterra under this Agreement and for ensuring that Opterra performs all work on the Property in accordance with the provisions of this Agreement. Seller is responsible for completing construction and for all other obligations of Seller hereunder, regardless of the performance, acts, or omissions of Opterra.</p>
<b>Excludes:</b>	<ul style="list-style-type: none"> <li>a. Unforeseen groundwork (for excavation and circumvention of underground obstacles under the System Site to the extent necessary to install the System).</li> <li>b. Upgrades or repair work on Purchaser's utility electrical infrastructure (including: Purchaser's utility service, transformers, substations, poles, breakers, reclosers, and disconnects) on the Property to the extent necessary for the installation and operation of the System; provided, however, that neither the estimated or actual cost of such work exceeds \$100,000.00. In the event that such estimated or actual costs exceed \$100,000.00, the Parties shall have the option to terminate this Agreement in accordance with Exhibit 4, Section 6.</li> <li>c. tree removal, tree trimming, or mowing, or any landscape improvements not damaged during construction.</li> <li>d. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and</li> </ul>

	<p>any lighting not required to meet the minimum code compliance) erected by or at the direction of Purchaser.</p> <ul style="list-style-type: none"><li>e. Removal of existing lighting, light poles, or concrete light post bases to the extent necessary for installation of the System.</li><li>f. New lighting fixtures of any kind erected by or at the direction of Purchaser.</li><li>g. Structural upgrades to the Improvements. As used throughout this Agreement, <b>"Improvements or Facility"</b> means any existing buildings and structures located on the Property as of the Effective Date.</li><li>h. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access) installed by or at the direction of Purchaser.</li><li>i. Changes in System design caused solely 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.</li><li>j. Any under-canopy light fixtures, lamps, or bulbs.</li></ul>

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## Exhibit 2: System Description, Delivery Point and Premises

1. **System Site:** See Exhibit 2, Attachment A
2. **Solar System Size (DC kW):** 738.72 kW DC
3. **Anticipated First Year Solar Energy Production (kWh):** 1,232,496 kWh AC
4. **System Type(s) and Expected Structure:** Carport
5. **Expected Equipment:**

**a. Expected Solar Equipment**

<u>Solar Components</u>	<u>Quantity</u>
Tier 1 540 Watt JA Solar JAM72-D30-540-MB solar modules (or equivalent)	1368
Tier 1 inverter CPS SCA50/60KTL-DO/US-480 (or equivalent)	11

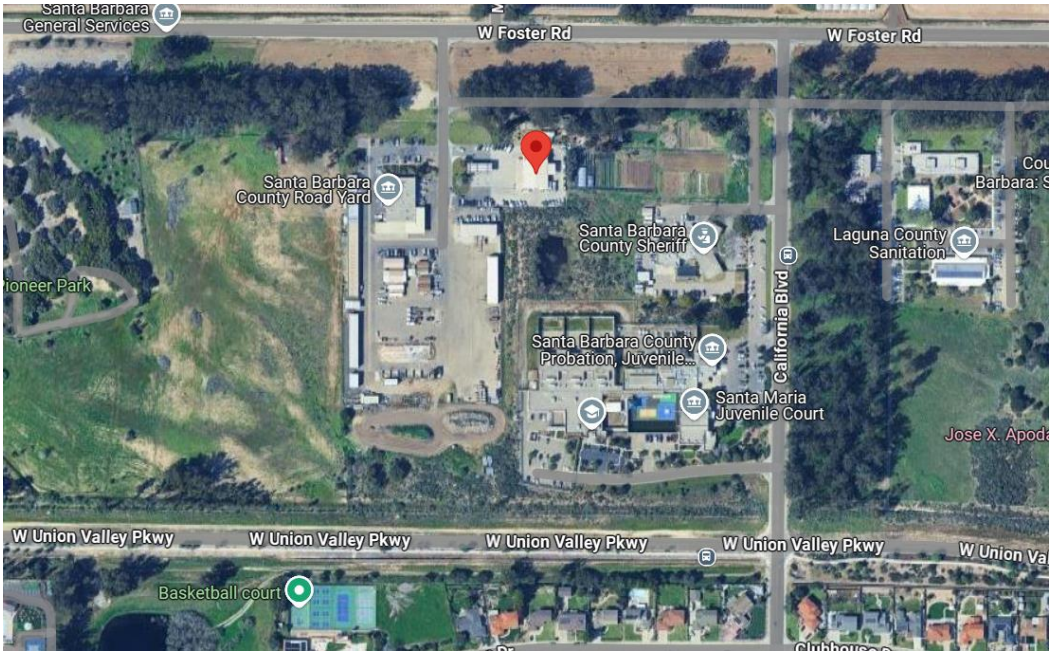
6. **Property and System Layout:** See **Exhibit 2, Attachment A**.
7. **Delivery Point and System Site:** Attachment A to this **Exhibit 2** contains one or more drawings or images depicting:
  - a. System Site, including the Improvements (as applicable);
  - b. System Site;
  - c. Delivery point for electricity generated by the **System** (the “**Delivery Point**”);
  - d. Access points needed for Seller to install and service the System; and
  - e. Construction assumptions (if any).
8. **Electric Utility:** PG&E



Exhibit 2

Attachment A: Facility and System Layout

An Aerial Photograph of the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	Existing electrical service entrance on East side of building Main Electric Service
Access Points	Existing driveways on the north and east sides of the property







Preliminary designs and layouts subject to full and final engineering, and all permitting requirements. Designs will be approved by Purchaser prior to permitting.

**End of Exhibit 2**

## Exhibit 4: 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 (including all Exhibits) 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 in accordance with the written agreement of all of the parties hereto; and (d) the words "include," "includes" and "including" mean include, includes 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. Design, Development and Operation of the System.** Seller shall provide for Purchaser the design, development and operation of the System from the Effective Date through the Initial Term and any Additional Term, as provided herein. At the end of the sixth (6th) Contract Year and at the end of the Initial Term and each Additional Term, or upon mutual agreement any time after the end of the 6th year of the Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller as set forth more fully in Section 15 of this Exhibit 4.
- 3. Term.**
  - a. Term: Effective Date.** This Agreement is effective as of the Effective Date and shall expire twenty-five years after the Commercial Operation Date ("Term"), subject to the Purchaser's option to extend the Performance Period for the Additional Performance Period(s). The Performance Period for the services hereunder with respect to the System shall commence on the Commercial Operation Date for the System, and shall continue for the length of time specified in Exhibit 1 unless earlier terminated or extended as provided for in this Agreement. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 6.h and continues for the duration of the Term, unless earlier terminated or extended as provided for in this Agreement. The term "**Contract Year**" or "Performance Period Year" means each successive twelve-month period beginning on the Commercial Operation Date and continuing for the remainder of the Term.
  - b. Additional Performance Period(s).** The Parties may agree in writing to extend this Agreement for one or more Additional Performance Period(s) at a Contract Price to be agreed upon.
- 4. Billing and Payment and Taxes.**
  - a. Santa Barbara County Administrative Fee.** Seller agrees to make a payment to Purchaser in the amount of \$75,000.00 divided into two equal payments. The first half in the amount of \$37,500.00 is due upon the approval and issuance of all project permits and Commencement of Installation, and the second half in the amount of \$37,500.00 is due upon the Commercial Operation Date, when the System is energized.
  - b. Contract Price Monthly Payment.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Section 5 of Exhibit 1 (the payment for solar services being the "**Contract Price**"). The monthly payment for such kWh energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 11). Additional costs for items differing from the assumptions in Exhibit 1, and Section 7 are Purchaser's responsibility.
  - c. Monthly Invoices.** Seller shall invoice Purchaser monthly for the electricity generated by the System available. Each monthly invoice shall state (i) the amount of electricity 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. Purchaser shall allow Seller to install an internet-based monitoring system that will be used to among other things

monitor performance and provide billing information. Purchaser hereby agrees to reasonably cooperate with the operator, and in no event unreasonably interfere with the installation or operation, of any such system. Seller shall be allowed to provide estimated billing in the event actual data becomes temporarily unavailable. Estimated bills shall be based on data from prior months. Any estimated bills will be trued up upon acquisition of actual data which will be available from the Meter.

- d. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following issuance of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of six percent (6%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. Monthly invoices include an online payment option as payment from Purchaser is expected in ACH, EFT, Wire Transfer, or another similar digital format. Payments received by check, money order, or other similar paper-based format will incur an additional ten-dollar (\$10.00) handling fee.
- e. **Invoice Adjustments; Disputes over Invoices.** Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered, or adjust any invoice for any arithmetic, computational or meter-related error within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If the Parties do not resolve such a dispute within such thirty (30) days, then the Parties may pursue their rights appropriately. Seller shall return to Purchaser any disputed amount which is ultimately determined to have been improperly billed to Purchaser, together with interest thereon at five percent (5%) per month, which shall be Purchaser's sole and exclusive remedy with respect to a dispute concerning any invoice. Purchaser shall pay to Seller interest at a rate of one percent (1%) per month on any disputed amount which is ultimately determined to have been properly billed to Purchaser, until such properly billed amount is paid.
- f. **Taxes.**
  - i. **Purchaser's Taxes.** Purchaser is responsible for: (1) payment of, or reimbursement to Seller, for all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the utility's electricity distribution system; and (2) real property taxes.
  - ii. **Seller's Taxes.** 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**").

- 5. **Environmental Attributes.** Purchaser is entitled to the benefit of and will retain all ownership interests in the Environmental Attributes. Seller shall cooperate with Purchaser in obtaining, securing and transferring any and all Environmental Attributes. Seller is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Purchaser. Seller shall not make any filing or statements inconsistent with Purchaser's ownership interests in the Environmental Attributes. If any Environmental Attributes are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser. Seller is the owner, and is entitled to the benefit, of all Tax Incentives.

**"Environmental Attributes"** means any and all credits, compensation, 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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by applicable law; and (c) the reporting rights to any Governmental

Authority related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Environmental Attributes include, as applicable, carbon trading credits, renewable energy credits or certificates, renewable energy compensation mechanisms established by the applicable Governmental Authorities, including emissions reduction credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

**“Governmental Authority”** means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

**“Tax Incentives”** means any and all (a) depreciation benefits, (b) investment tax credits, (c) production tax credits and (d) similar tax credits or grants under federal, state or local law relating to the construction, ownership, operation, or production of power from the System.

## 6. Project Completion.

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System from the Effective Date through the Commercial Operation Date, subject to this Section 6 and Sections 7 and 12 of this Exhibit 4, and all other terms and conditions of this Agreement.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to Commencement of Installation. Purchaser shall have ten (10) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such (10) day period shall be deemed approval of the design. If Purchaser disapproves the design, Purchaser shall provide Seller written explanation of its disapproval and Seller shall modify and resubmit the design for Purchaser’s approval in accordance with this Section 6.b. If Seller determines that the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 6.c, and Purchaser shall reimburse Seller for all of Seller’s costs and expenses incurred from the Effective Date through such early termination date arising out of this Agreement, including, without limitation, any costs and expenses incurred in connection with interconnection, pursuing third party agreements that Seller reasonably deems necessary, and securing any Tax Incentives and/or Environmental Attributes. If, after Purchaser approves the System design in accordance with this Section 6.b, Purchaser requests or requires any modifications to such design, Seller shall not be obligated to comply with such requests or requirements unless (i) Seller determines that such requests or requirements do not have a materially adverse impact on the System, (ii) Purchaser agrees to reimburse Seller for any costs and expenses Seller incurs in complying with such requests or requirements, including, without limitation, any costs and expenses incurred in connection with redesign, interconnection, pursuing third-party agreements that Seller reasonably deems necessary, and securing any Tax Incentives and/or Environmental Attributes, and (iii) Purchaser agrees to extend the Commencement of Installation date in accordance with Section 6.d and acknowledges that the Commercial Operation Date may be delayed.
- c. **Termination Prior to Commencement of Installation.** If, at any time during or prior to the Commencement of Installation, (i) circumstances arise which have been excluded from System Installation Pricing and/or Contract Price calculations pursuant to Exhibit 1 (provided, such circumstances do not constitute Purchaser Interferences as defined in Section 6.d), or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have negotiated a System Installation Pricing and/or Contract Price adjustment for sixty (60) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing thirty (30) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination.
- d. **Commencement of Installation.** **“Commencement of Installation”** means the date that Seller or its installation contractor has begun on-site physical work on the Premises. Seller shall exercise



commercially reasonable efforts to achieve Commencement of Installation of the System within 365 days after the Effective Date or 365 days after the effective date of any mutually executed amendment to this Agreement unless such amendment states otherwise. If Purchaser requires work, including utility interconnection power kill, to occur outside normal weekday business hours, this shall allow for amended pricing to be agreed upon prior to any such work commencing. If installation work has already commenced, Purchaser shall provide 5 days' notice of any requirement for work to occur outside normal weekday business hours. If Commencement of Installation has not occurred 365 days after the Effective Date, Purchaser may terminate this Agreement, without liability for damages, by providing thirty (30) days' prior written notice to Seller; provided, no Purchaser Interferences have occurred; provided further, that Seller does not achieve Commencement of Installation on or before the end of such thirty (30) day notice period. The 365-day period to achieve Commencement of Installation under this Section 6.d shall be extended on a day-for-day basis for any Purchaser Interferences (as hereinafter defined), and Purchaser shall reimburse Seller for any costs or expenses incurred by Seller in connection with such Purchaser Interferences, including, without limitation, any costs and expenses incurred in connection with redesign, interconnection, pursuing third-party agreements that Seller reasonably deems necessary, and securing any Tax Incentives and/or Environmental Attributes. As used herein, "**Purchaser Interferences**" means (i) any alterations of or modifications to the Facility or Premises made by Purchaser after the Effective Date, except for those made in accordance with Section 7.e, (ii) any Purchaser requirements for work, design, or equipment that differ from those set forth in this Agreement, the System design approved in accordance with Section 6.b, and/or industry standards, (iii) obstruction of Seller's (or Seller's contractors) access to the Facility or Premises, and (iv) any other actions of (or permitted by) Purchaser that adversely impact Seller's performance of, or the schedule for performance of, its obligations hereunder.

- e. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "**Approval**"):

- i. all zoning, land use and building permits required for Seller to construct, install and operate the System; and
- ii. all agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility or any Governmental Authority.

- f. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure event, Purchaser Interferences, or amendment to this Agreement, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- g. **Termination due to Purchaser Interferences.** If, after the Effective Date and until the Commercial Operation Date, any Purchaser Interferences occur, and the Parties are unable to negotiate mutually-agreeable changes to this Agreement to address such Purchaser Interferences within sixty (60) days thereafter, then Seller may terminate this Agreement without any liability hereunder and Purchaser shall reimburse Seller for all of Seller's costs and expenses incurred from the Effective Date through such early termination date, including, without limitation, any costs and expenses incurred in connection with interconnection, materials, construction, pursuing third-party agreements that Seller reasonably deems necessary, and securing any Tax Incentives and/or Environmental Attributes.
- h. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). The "Commercial Operation Date" for a System is the date that such System is mechanically complete, has been interconnected to the grid and is capable of delivering electric energy to the Delivery Point on a regular basis, and Seller has notified Purchaser of same ("COD Notice"), which COD Notice includes

copies of the permission to operate from the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Property (the "Utility"), as set forth on Exhibit 2. Such COD Notice shall be deemed effective as to the achievement of the Commercial Operation Date unless Purchaser reasonably objects in writing, with provision of supporting documentary evidence therefor, within five (5) days of the date of such COD Notice.

## 7. Operation and Maintenance.

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable City, County, and State rules, regulation and building codes.
- b. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- c. **Outages.** Upon Purchaser's written request, Seller may take the System off-line for a total of up to four (4) days during each Contract Year (each event an "**Outage**" and the four (4) day period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to this Section 7, or requested by Purchaser under this Section 7 (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement. Seller shall be responsible to pay Purchaser for all Environmental Attributes lost by Seller (if applicable) as a result of the lost production during any Outages exceeding the Outage Allowance in any given Contract Year. Purchaser shall be responsible to pay Seller for all Tax Incentives lost by Seller (if applicable) as a result of the lost production during any Outages exceeding the Outage Allowance in any given Contract Year.
- d. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- e. **Alteration to Premises.** From and after the Effective Date, Purchaser shall provide Seller no less than thirty (30) days' prior written notice (except for emergency repairs) of any alterations or repairs to the Premises or any Improvement which may affect the engineering, construction, operation, or maintenance of the System. Seller shall have ten (10) days to submit to Purchaser any reasonable request to mitigate such effects, and Purchaser shall use commercially reasonable efforts to conduct such repairs or alterations in compliance with any such Seller requests. If any repair or alteration under this Section 7.e results in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 9 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or

repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to this Section 7. Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

## 8. Miscellaneous Rights and Obligations of the Parties.

- a. **Access Rights by License.** Purchaser hereby grants, or shall cause the legal owner of the Premises (the "**Landlord**") to grant (if applicable), to Seller and to Seller's agents, employees, contractors and the utility a non-exclusive irrevocable License running with the Premises (the "**Non-Exclusive License**") (i) for access to, on, over, under and across the Premises, and (ii) for the installation, operation, use, and maintenance of the System from the Effective Date until the date that is one hundred eighty (180) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. The Lease and Premises are more fully described in Exhibit 5. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, licensable license running with the Premises (the "**Exclusive License**"), and together with the Non-Exclusive License, the "License") for purposes of the installation, operation, use and maintenance of the System on such exclusively Licensed area of the Premises during the License Term. Seller and its employees, agents and contractors must comply with Purchaser's site safety and security requirements when on the Premises (other than in respect of the fenced area governed by the Exclusive License during the License Term. During the License Term, Purchaser shall preserve and protect Seller's rights under the License and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere with such rights or access. Seller may record a customary memorandum of License in the land records respecting the License.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors.
- d. **Insolation.** Purchaser acknowledges 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, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**



- i. **Lien Obligations.** 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, except such encumbrances as may be required to allow Seller access to the Premises, (each a “**Lien**”) on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within fifteen (15) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 8(f)(i).
- g. **Communication.** The Parties shall each provide full contact info for designated representatives for any necessary communications during normal business hours for the Term of the Agreement. Such representatives shall be required to reply in a business professional timely manner to all communications from the other Party.

## 9. Relocation of System.

If, during the Term, Purchaser ceases to conduct business operations at the Property or vacates the Property; the Property have been destroyed; or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser may, but shall not be obligated to, propose in writing the relocation of the System, at Purchaser's cost, in lieu of termination of the Agreement by Seller for a Default Event by Purchaser. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement pursuant to Section 12(b)(ii).

## 10. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 15(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to its original condition (excluding ordinary wear and tear), including the removal of above ground System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane, if applicable. If the System is installed on the roof of an Improvement, Seller's warranties under Section 13(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

## 11. Measurement

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the web-based monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Purchaser's cost.
- c. **Utility Billing Cooperation.** Purchaser shall cooperate with Seller in attaining any utility data and/or past invoices that may assist in reconciling any discovered discrepancies or anomalies.

## 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 is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is 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 perform any material obligation under this Agreement not addressed elsewhere in this Section 12(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
  - iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. 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 (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
  - v. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 9 above, or (II) Purchaser pays the Termination Payment determined under Exhibit 4, Attachment A, within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- b. **Remedies.**
  - i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement. Seller's rights under this Section 12(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
  - ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing fifteen (15) days prior written

notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 12(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.

- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 12(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
  - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be the greater of (i) the Fair Market Value of the System or (ii) the sum of the Termination Payment set forth in this Exhibit 4, Attachment A, applicable as of the date of the Termination, any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller and all costs reasonably incurred by Seller by reason of the termination, including any loss of tax credits or rebates.
  - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of energy per kWh 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; (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 12(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 12(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 12(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 12(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 10 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Purchaser pursuant to Section 12(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.
  - i. **Reservation of Rights.** Except in the case of a termination under Section 12(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 12(b)(iii), nothing in this Section 12 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
  - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Exhibit 4, Attachment A, following a Default Event by Purchaser.
  - iii. **No Limitation on Payments.** Nothing in this Section 12 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

### 13. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

- 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 (evidence of which such Party has provided to the other Party upon reasonable request), and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
  - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:
  - i. **License.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the Licenses in Section 8(a); (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises 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 Premises; and, (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, and if the Lease is between Purchaser and Seller, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may 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 is bound.
  - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) 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. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.
- c. **Seller's Warranties.**
  - i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant repair of roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof. Purchaser shall provide copies of any roof warranty from the roofing manufacturer and/or installer within two (2) weeks of the effective date of this Agreement.
  - ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 13(c)(i) above), Seller shall repair or reimburse Purchaser for such damage.
  - iii. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 13(a) AND 13(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 13, WHETHER ARISING IN

CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 13(a) AND 13(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THIS AGREEMENT DOES NOT GUARANTY ELECTRICAL COST SAVINGS FOR THE PURCHASER.

#### 14. Insurance.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
  - i. **Seller's Insurance.** Seller shall maintain or ensure the following is maintained (a) property insurance on the System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) excess umbrella coverage of at least \$4,000,000 per occurrence and \$4,000,000 in aggregate, (d) if seller has employees, employer's liability insurance with coverage of at least \$1,000,000 and workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
  - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - iii. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is 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.
  - iv. **Certificates.** Upon the other Party's request, each Party shall deliver to 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.
  - v. **Deductibles.** Each Party shall pay its own insurance 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, and (ii) covered by an indemnity set forth in this Agreement.

#### 15. Ownership; Option to Purchase.

- a. **Ownership of System.**
  - i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System, and all Tax Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
  - ii. **Notice to Purchaser Lienholders.** Purchaser shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises 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.



- iii. **Fixture Disclaimer.** 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 Premises are located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
  - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Purchaser), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
  - v. **Eviction Notice.** To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.
- b. **Option to Purchase.**
  - i. **Exercise of Option.** At the end of the sixth (6<sup>th</sup>) Contract Year and annually thereafter, 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 greater of the Fair Market Value of the System or the Estimated Termination Payment set forth in this Exhibit 4, Attachment A, applicable as of the date of the transfer of title to the System. Purchaser shall notify 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 completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
  - ii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, 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 on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will 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.
  - iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 21(c), Seller will have no further liabilities or obligations hereunder for the System.

## 16. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers,

shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (1) any Claim as defined in Section 16(b) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 13 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by the gross negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 16(a) does not apply to Liabilities arising out of or relating to 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 may 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 has no liability under this Section 16(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
  - i. **Seller Indemnity.** 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)(iii)) deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
  - ii. **Purchaser Indemnity.** 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, agents or employees.
  - iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**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 of third-party claims pursuant to Section 16.b, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in this Exhibit 4, Attachment A, shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 16(d)(i). Furthermore, nothing in this paragraph will protect seller from liability for damages caused by the gross negligence of seller, however this shall not be construed to mean that Seller can only be liable under a gross negligence standard.
- ii. Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 16, and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 16(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

**17. Change in Law.**

- a. Impacts of Change in Law.** If a Change in Law has occurred that has or will have a material adverse effect on a Party's rights, entitlement, obligations, costs, or ITC under this Agreement, then such Party may so notify the other Party in writing of such Change in Law. Within thirty (30) days following receipt by the other Party of such notice, if the other Party agrees that such a Change in Law has occurred, the Parties shall meet and attempt in good faith to negotiate such 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 either Party may terminate this Agreement per the conditions herein, and Seller shall remove the System (if applicable) and restore the Premises in accordance with Section 10 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. "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 (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), (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, or (iv) a change in ITC and or Modified Accelerated Cost Recovery System value imposed by Law or regulation.

**18. Force Majeure.**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and not arising out of any act or omission by or on behalf 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; unavailability of equipment, supplies or products (but not to the extent that any such availability 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. Force Majeure event. If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure event. If the Force Majeure event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure event.
- c. Extended Force Majeure. If a Force Majeure event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, (b) Seller shall remove the System as required under Section 10 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure event affects Purchaser and Purchaser elects to terminate the Agreement) and (c) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- d. 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.

## 19. Assignment and Financing.

### a. Assignment.

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 19(a), 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 may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the Seller's proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 19(a)(i):

- (1) Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 19(a)(iii)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
- (2) Purchaser may, by providing prior notice to Seller, assign this Agreement:
  - a. to an affiliate of Purchaser or a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument provided by Seller on terms satisfactory to Seller, including at Seller's sole discretion as to the assignee's creditworthiness; and
  - b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P; and
  - c. upon the reimbursement of Seller's reasonable expenses to effectuate such transfer, which may include, but not be limited to: credit report and review; UCC, tax lien, bankruptcy, and judgment lien searches; certificates of good standing; and legal recordings.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
  - a. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and timely negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
  - b. **Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.
- iv. **Financing Party Notification and Cure.** In the event of any Default Event where Seller is the Defaulting Party, Purchaser shall provide a notice of such Default Event to any Financing Party for which Purchaser has been provided contact information simultaneously with any such notice provided to Seller. Purchaser shall not terminate this Agreement in relation to a Default Event of Seller unless each Financing Party has received such notice and has had an opportunity to cure any Default Event of Seller during the applicable cure period provided to Seller, plus an additional 15 days thereafter.

## 20. Confidentiality and Publicity.

- a. **Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of

performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 20(a).

- b. Permitted Disclosures.** Notwithstanding Section 20(a):
- i. a Party may provide such Confidential Information to its affiliates and to its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
  - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) 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 reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.
- c. Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or be destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 20 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, for breaches of this Section 20. 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 20, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) 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 the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises, and or images with general System information on the Seller's web site, reflecting its association with the System.

## **21. Miscellaneous Provisions.**

- a. Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in the state where the System is located. The arbitration shall be administered by the American Arbitration Association in

accordance with its Construction Industry Arbitration Rules in effect on the date of the demand for arbitration and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.

- b. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be 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 must 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.
- c. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- d. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement. Without limiting the generality of the foregoing, such actions may include Purchaser's cooperation with, and execution of documents provided by, any third parties contracted by Seller in connection with this Agreement.
- e. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- f. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may 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 may 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 commercially 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 may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 10 of this Agreement.
- g. **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 shall 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.
- h. **No Partnership.** No provision of this Agreement may 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 may be considered the agent of the other.
- i. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. 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 provision shall not be read to render this Agreement unenforceable

or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.

- j. **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.
- k. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- l. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.



## Exhibit 4

*Attachment A: Estimated Termination Payment*

End of Contract Year	Estimated Termination Value
1	\$5,733,357
2	\$5,446,689
3	\$5,174,355
4	\$4,915,637
5	\$4,669,855
6	\$2,495,481
7	\$2,408,268
8	\$2,317,231
9	\$2,222,116
10	\$2,122,654
11	\$2,018,557
12	\$1,909,516
13	\$1,795,201
14	\$1,675,258
15	\$1,601,020
16	\$1,473,056
17	\$1,338,619
18	\$1,197,276
19	\$1,048,564
20	\$891,983
21	\$731,895
22	\$563,251
23	\$385,473
24	\$197,944
25	\$148,458

**End of Exhibit 4**



## Exhibit 5: Legal Description of the Premises with Map

Legal Description: Real property in the City of Santa Maria, County of Santa Barbara, State of California, described as follows: PARCEL ONE: ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND BEING AND SITUATE IN SECTION 3, TOWNSHIP 9 NORTH, RANGE 34 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT A 1 - 1/4 INCH BRASS CAPPED MONUMENT SET AT THE SOUTHERLY QUARTER CORNER OF SECTION 3, TOWNSHIP 9 NORTH, RANGE 34 WEST, S.B.B. AND M. AS SAID PIPE AND QUARTER CORNER ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP SHOWING SURVEY OF A PORTION OF THE SANTA MARIA ARMY AIRFIELD AND RIGHTS OF WAYS DEEDED TO THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA" FILED IN BOOK 29 AT PAGE 141 RECORD OF SURVEYS IN THE OFFICE OF THE SANTA BARBARA COUNTY RECORDER, SAID 1 - 1/4 INCH BRASS CAPPED MONUMENT ALSO BEING SHOWN UPON THAT CERTAIN MAP ENTITLED "SURVEY OF SOUTHEAST PORTION, SANTA MARIA PUBLIC AIRPORT", FILED IN THE OFFICE OF THE SANTA BARBARA COUNTY SURVEYOR AS COUNTY SURVEYOR MAP NO. 1246, AND RUNNING THENCE NORTH 89° 32' 19" WEST, ALONG THE SOUTHERLY LINE OF SAID AIRPORT, 1332.40 FEET TO A 1 - 1/4 INCH BRASS CAPPED MONUMENT, AS SAID MONUMENT IS SHOWN UPON THE HEREIN ABOVE REFERRED TO MAPS; THENCE NORTH 0° 29' 31" WEST 1296.71 FEET TO A POINT FROM WHICH A 3/4 INCH PIPE SURVEY MONUMENT BEARS SOUTH 0° 29' 31" EAST 30.00 FEET DISTANT; THENCE SOUTH 89° 42' 16" EAST 2718.32 FEET TO A POINT FROM WHICH A 3/4 INCH PIPE SURVEY MONUMENT BEARS SOUTH 0° 33' 01" EAST 30.00 FEET DISTANT AND A 2 - 1/2 INCH BRASS CAPPED SURVEY MONUMENT BEARS SOUTH 89° 42' 16" EAST 1110.94 FEET DISTANT; THENCE SOUTH 0° 33' 01" EAST 1340.26 FEET TO A 3/4 INCH PIPE SURVEY MONUMENT SET ON THE SOUTHERLY LINE OF SAID SECTION 3, BEING A POINT IN THE SOUTHERLY LINE OF THE SANTA MARIA PUBLIC AIRPORT; THENCE NORTH 88° 05' 01" WEST ALONG SAID SOUTHERLY LINE, 1389.05 FEET TO THE POINT OF BEGINNING. THE HEREIN ABOVE DESCRIBED TRACT OF LAND BEING MORE PARTICULARLY SHOWN UPON THE HEREIN ABOVE REFERRED TO MAP FILED IN THE OFFICE OF THE SANTA BARBARA COUNTY SURVEYOR AS "COUNTY SURVEYOR'S MAP NO. 1246" EXCEPTING THEREFROM ALL MINERALS, INCLUDING OILS, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER SAID LANDS. PARCEL TWO: BEGINNING AT THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE COUNTY OF SANTA BARBARA, RECORDED FEBRUARY 13, 1968 AS INSTRUMENT NO. 5741 IN BOOK 2221, PAGE 1408 OF OFFICIAL RECORDS IN THE SANTA BARBARA COUNTY RECORDER'S OFFICE; THENCE ALONG THE NORTHERLY EXTENSION OF THE EASTERLY BOUNDARY OF SAID PARCEL OF LAND, NORTH 0° 45' 35" EAST, 149.10 FEET TO A POINT IN THE ARC OF A 965.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY AND WHOSE RADIAL CENTER BEARS SOUTH 1° 55' 59" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 05' 56", A DISTANCE OF 1.67 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE NORTH 88° 09' 57" WEST, 1465.50 FEET TO THE BEGINNING OF A 15.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND TANGENT TO THE LAST DESCRIBED COURSE; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 89° 50' 12"; A DISTANCE OF 23.52 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE, SOUTH 1° 59' 51" WEST, 140.06 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG SAID NORTHERLY BOUNDARY SOUTH 88° 23' 40" EAST, 1485.37 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM ALL MINERALS, INCLUDING OIL, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER SAID LANDS. PARCEL THREE: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL OF LAND DESCRIBED IN SAID ABOVE MENTIONED DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG THE NORTHERLY EXTENSION OF THE WESTERLY BOUNDARY OF SAID LAST MENTIONED PARCEL OF LAND, NORTH 0° 49' 05" EAST, 159.95 FEET; THENCE SOUTH 88° 09' 57" EAST, 1161.85 FEET TO THE BEGINNING OF A 15.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE LAST DESCRIBED COURSE; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 09' 48", A DISTANCE OF 23.60 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE, SOUTH 1° 59' 51" WEST, 140.20 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 88° 23' 40" WEST 1173.63 TO THE POINT OF BEGINNING. EXCEPTING

THEREFROM ALL MINERALS, INCLUDING OIL, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER  
SAID LANDS. APN: 111-231-004

**End of Exhibit 5**

## Exhibit 6: Memorandum of License Agreement

FORM OF Follows on next page

**When recorded mail to:**

SBC Foster Rd Campus Renewable Energy, LLC  
430 North College Ave., Suite 440  
Fort Collins, CO 80524

**MEMORANDUM OF LICENSE AGREEMENT**

This Memorandum of License Agreement (the "Memorandum") is entered into this \_\_\_\_\_, 2025 by and between SBC Foster Rd Campus Renewable Energy, LLC ("Seller"), whose address for purposes hereof is **430 North College Ave., Suite 440, Fort Collins, CO 80524** and County Of Santa Barbara ("Purchaser") with its address for notice purposes being **260 N San Antonio Rd., Santa Barbara, CA, 93110**.

**Recitals**

A. Seller and Purchaser have entered into a License Agreement (the "License") contained in the Solar Services Agreement dated as of (Effective Date) pursuant to which Purchaser has Licensed to Seller access to, on, over, under and across 812 W Foster Rd., Santa Maria, CA 93455 (the "Premises"). The legal description of the Premises is contained in Exhibit A.

The initial term of the License shall commence on the Effective Date and continue for a period extending one hundred eighty (180) days after the Term of the Solar Services Agreement. The Solar Services Agreement has a Term of Twenty-Five (25) years, commencing on the Commercial Operation Date, and may be extended by up to three (3) Additional Terms of five (5) years each.

B. Seller and Purchaser desire to execute this Memorandum, which is to be recorded in the Public Records of Santa Barbara County, CA, in order that third parties may have notice of the estate of Purchaser in the Licensed Premises and of the License.

**Agreement**

NOW, THEREFORE, in consideration of the covenants provided for in the License to be performed by Seller, Purchaser does hereby demise and License unto Seller the Premises on the terms, and subject to the conditions set forth in the Solar Services Agreement, among which are the following:

1. **TERM.** The initial term of the License shall be for a period, ***commencing on the Effective Date, and ending one hundred eighty (180) days after the end of Term or extension thereof.***

2. **INCORPORATION OF LICENSE TERMS BY REFERENCE.** All of the terms, conditions, provisions and covenants of the License are incorporated in this Memorandum by reference as though written out at length herein. In the event of any inconsistency between the provisions of this Memorandum

and those of the License, the provisions of the License shall control. Copies of the License are held by both Seller and Purchaser at their respective addresses first set forth above.

IN WITNESS WHEREOF, the Seller and Purchaser have caused this Memorandum to be executed by their respective duly authorized representatives as of the date first above written. Notarized Signature Pages Follow.

<b>Purchaser:</b>	County Of Santa Barbara	<b>Seller:</b>	SBC Foster Rd Campus Renewable Energy, LLC
<b>Printed Name:</b>	Laura Capps	<b>Printed Name:</b>	Nicholas Perugini
<b>Title:</b>	Chair of the Board of Supervisors	<b>Title:</b>	Manager
<b>Signature:</b>		<b>Signature:</b>	

<b>Attest:</b>		<b>Recommended for Approval:</b>	
<b>Printed Name:</b>	Mona Miyasato	<b>Printed Name:</b>	Kirk Lagerquist
<b>Title:</b>	County Executive Officer, Clerk of the Board	<b>Title:</b>	Director, General Services Department
<b>Signature:</b>		<b>Signature:</b>	

<b>APPROVED AS TO FORM:</b>		<b>APPROVED AS TO ACCOUNTING FORM:</b>	
<b>Printed Name:</b>	Rachel Van Mullem	<b>Printed Name:</b>	Betsy M. Schaffer, CPA
<b>Title:</b>	County Counsel, County of Santa Barbara	<b>Title:</b>	Auditor-Controller, County of Santa Barbara
<b>Signature:</b>		<b>Signature:</b>	
	Deputy County Counsel		Deputy

<b>APPROVED AS TO FORM:</b>	
<b>Printed Name:</b>	Gregory Milligan, ARM
<b>Title:</b>	Risk Manager
<b>Signature:</b>	
	Risk Management


## MOL EXHIBIT A: DESCRIPTION OF LANDLORD'S PREMISES

Legal Description: Real property in the City of Santa Maria, County of Santa Barbara, State of California, described as follows: PARCEL ONE: ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND BEING AND SITUATE IN SECTION 3, TOWNSHIP 9 NORTH, RANGE 34 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT A 1 - 1/4 INCH BRASS CAPPED MONUMENT SET AT THE SOUTHERLY QUARTER CORNER OF SECTION 3, TOWNSHIP 9 NORTH, RANGE 34 WEST, S.B.B. AND M. AS SAID PIPE AND QUARTER CORNER ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP SHOWING SURVEY OF A PORTION OF THE SANTA MARIA ARMY AIRFIELD AND RIGHTS OF WAYS DEEDED TO THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA" FILED IN BOOK 29 AT PAGE 141 RECORD OF SURVEYS IN THE OFFICE OF THE SANTA BARBARA COUNTY RECORDER, SAID 1 - 1/4 INCH BRASS CAPPED MONUMENT ALSO BEING SHOWN UPON THAT CERTAIN MAP ENTITLED "SURVEY OF SOUTHEAST PORTION, SANTA MARIA PUBLIC AIRPORT", FILED IN THE OFFICE OF THE SANTA BARBARA COUNTY SURVEYOR AS COUNTY SURVEYOR MAP NO. 1246, AND RUNNING THENCE NORTH 89° 32' 19" WEST, ALONG THE SOUTHERLY LINE OF SAID AIRPORT, 1332.40 FEET TO A 1 - 1/4 INCH BRASS CAPPED MONUMENT, AS SAID MONUMENT IS SHOWN UPON THE HEREIN ABOVE REFERRED TO MAPS; THENCE NORTH 0° 29' 31" WEST 1296.71 FEET TO A POINT FROM WHICH A 3/4 INCH PIPE SURVEY MONUMENT BEARS SOUTH 0° 29' 31" EAST 30.00 FEET DISTANT; THENCE SOUTH 89° 42' 16" EAST 2718.32 FEET TO A POINT FROM WHICH A 3/4 INCH PIPE SURVEY MONUMENT BEARS SOUTH 0° 33' 01" EAST 30.00 FEET DISTANT AND A 2 - 1/2 INCH BRASS CAPPED SURVEY MONUMENT BEARS SOUTH 89° 42' 16" EAST 1110.94 FEET DISTANT; THENCE SOUTH 0° 33' 01" EAST 1340.26 FEET TO A 3/4 INCH PIPE SURVEY MONUMENT SET ON THE SOUTHERLY LINE OF SAID SECTION 3, BEING A POINT IN THE SOUTHERLY LINE OF THE SANTA MARIA PUBLIC AIRPORT; THENCE NORTH 88° 05' 01" WEST ALONG SAID SOUTHERLY LINE, 1389.05 FEET TO THE POINT OF BEGINNING. THE HEREIN ABOVE DESCRIBED TRACT OF LAND BEING MORE PARTICULARLY SHOWN UPON THE HEREIN ABOVE REFERRED TO MAP FILED IN THE OFFICE OF THE SANTA BARBARA COUNTY SURVEYOR AS "COUNTY SURVEYOR'S MAP NO. 1246" EXCEPTING THEREFROM ALL MINERALS, INCLUDING OILS, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER SAID LANDS. PARCEL TWO: BEGINNING AT THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE COUNTY OF SANTA BARBARA, RECORDED FEBRUARY 13, 1968 AS INSTRUMENT NO. 5741 IN BOOK 2221, PAGE 1408 OF OFFICIAL RECORDS IN THE SANTA BARBARA COUNTY RECORDER'S OFFICE; THENCE ALONG THE NORTHERLY EXTENSION OF THE EASTERLY BOUNDARY OF SAID PARCEL OF LAND, NORTH 0° 45' 35" EAST, 149.10 FEET TO A POINT IN THE ARC OF A 965.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY AND WHOSE RADIAL CENTER BEARS SOUTH 1° 55' 59" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 05' 56", A DISTANCE OF 1.67 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE NORTH 88° 09' 57" WEST, 1465.50 FEET TO THE BEGINNING OF A 15.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND TANGENT TO THE LAST DESCRIBED COURSE; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 89° 50' 12"; A DISTANCE OF 23.52 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE, SOUTH 1° 59' 51" WEST, 140.06 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG SAID NORTHERLY BOUNDARY SOUTH 88° 23' 40" EAST, 1485.37 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM ALL MINERALS, INCLUDING OIL, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER SAID LANDS. PARCEL THREE: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL OF LAND DESCRIBED IN SAID ABOVE MENTIONED DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG THE NORTHERLY EXTENSION OF THE WESTERLY BOUNDARY OF SAID LAST MENTIONED PARCEL OF LAND, NORTH 0° 49' 05" EAST, 159.95 FEET; THENCE SOUTH 88° 09' 57" EAST, 1161.85 FEET TO THE BEGINNING OF A 15.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND TANGENT TO THE LAST DESCRIBED COURSE; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 09' 48", A DISTANCE OF 23.60 FEET; THENCE TANGENT TO SAID LAST DESCRIBED CURVE, SOUTH 1° 59' 51" WEST, 140.20 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN SAID DEED TO THE COUNTY OF SANTA BARBARA; THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 88° 23' 40" WEST 1173.63 TO THE POINT OF BEGINNING. EXCEPTING THEREFROM ALL MINERALS, INCLUDING OIL, GAS, ASPHALTUM AND HYDROCARBON SUBSTANCES, IN AND UNDER SAID LANDS. APN: 111-231-004

**Purchaser:**

County of Santa Barbara  
206 N. San Antonio Rd.  
Santa Barbara, CA, 93110.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

On \_\_\_\_\_, 2025, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Signature of Notary Public*



**Seller:**

SBC Foster Rd Campus Renewable Energy, LLC

430 North College Ave., Suite 440

Fort Collins, CO 80524

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Signature of Notary Public*

***End of Memorandum of License Agreement***