

**CONFIDENTIAL AND PROPRIETARY**

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**GENERAL TERMS AND CONDITIONS OF  
SOLAR POWER & SERVICES AGREEMENT**

*These General Terms and Conditions (“General Conditions”) are dated as of \_\_\_\_ day of \_\_\_, 2014 and are witnessed and acknowledged by SunEdison Government Solutions, LLC (“SunEdison”) and \_\_\_\_\_ (“Purchaser”), (together the “Parties”) as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into Solar Power & Services Agreements that may be entered into between SunEdison and Purchaser or between their respective affiliates. Except to the extent SunEdison or Purchaser becomes a party to a Solar Power & Services Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or Purchaser.*

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means the Solar Power & Services Agreement.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Billing Cycle” means the monthly billing cycle established by the Local Electric Utility.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” and “Commercial Operation Date” have the meaning set forth in Section 3.3(b).

“Confidential Information” has the meaning set forth in Section 15.1.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3, Section 4.3(a) or Section 11.2.

“Customer-Generator” means Purchaser and shall have the meaning given this term in the Net Metering Rules.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture,

distribution, formulation, packaging, labeling, or Release of or exposure to Hazardous Materials.

“Environmental Permit” means any federal, state, local, provincial, or foreign permits, licenses, approvals, consents or authorizations required or issued by any governmental authority under or in connection with any Environmental Law, including without limitation, any and all orders, consent orders or binding agreements issued by or entered into with a governmental authority under any applicable Environmental Law.

“Estimated Remaining Payments” means as of any date, the estimated remaining Payments to be made through the end of the then-applicable Term, as indicated in Schedule 4 of the Special Conditions, as updated to reflect the final System design and size.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4 based on the replacement costs of the System or comparable sales, whichever is less..

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means these Terms and Conditions.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Material” means petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1 for the time period specified in the Special Conditions.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 of the Special Conditions.

“Liens” has the meaning set forth in Section 7.1(e).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Net Energy Metering” means the process of measuring the difference between electricity

delivered by a Local Electric Utility to a customer and electricity generated by Solar Electric Generating Equipment and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

“Net Energy Meter” has the meaning set forth in the Net Metering Rules.

“Net Metered Production” means the amount of energy delivered to the Local Electric Utility generated by the System generated in excess of electricity delivered to a customer by the Local Electric Utility. .

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by Solar Electric Generating Equipment, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

“Net Metering Rules” means, collectively, and as amended from time to time, the New York net metering statute, NY CLS Public Service, s. 66-j and s. 66-1, and any New York net metering regulations related thereto, orders issued by the New York Public Service Commission, and the associated net metering tariff of the Local Electric Utility.

“Notice to Proceed Date” means the date that notice to proceed is issued by Provider for construction of the System pursuant to a construction contract, provided that such date shall not occur prior to May 1, 2015.

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble to the Solar Power & Services Agreement.

“Payment” has the meaning set forth in Section 6.1.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-Existing Environmental Conditions” means any actual or alleged: (i) violation of, breach of or non-compliance with any Environmental Laws or Environmental Permits with respect to the Premises that first existed, arose or occurred on or prior to the Effective Date; and (ii) the presence, Release or threatened Release of or exposure to any Hazardous

Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to the Effective Date.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the location described in Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migrating, leaching, dumping or disposing of a Hazardous Material into the environment.

“Renewal Term” has the meaning set forth in Section 2.1.

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Special Conditions and all other solar or renewable energy subsidies and incentives.

“Solar Power & Services Agreement” means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) and these General Conditions (including the Exhibits attached hereto) to the extent incorporated therein.

“Special Conditions” means the Solar Power and Services Agreement, excluding these General Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

“System” or “Solar Electric Generating Equipment” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions that generates electricity.

“Surrounding Land” means the all of the land owned by the Purchaser surrounding the Premises, including all of the landfills located at 41 Weibel Avenue, Saratoga Springs, New York.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance the requirements herein.

“Term” has the meaning set forth in Section 2.1.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for the number of years from the Commercial Operations Date specified in the Special Conditions for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (a "Renewal Term"). At least one hundred and eighty (180) days, but no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term. Purchaser shall have ninety (90) days to agree to continuation of the Agreement for the Renewal Term. Absent agreement to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term." During any Renewal Term, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred and eighty (180) days' prior written notice to the other Party.

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. If Purchaser terminates the Agreement prior to the Expiration Date of the Initial Term, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser's payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price and provide all calculations and assumptions supporting said Option

Price to Purchaser. Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties, including a Financing Party, if applicable, shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of this Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3, is equal to the Fair Market Value (as determined and demonstrated by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, including resale markets for such systems and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. If either Party disagrees with the Fair Market Value determined by said appraiser, the Parties shall mutually select two additional independent appraisers with experience and expertise in the solar photovoltaic industry. Fair Market Value shall equal the average of the valuations determined by said three appraisers which shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal(s) shall be borne by

Purchaser if such Fair Market Value results in a value equal or greater than the value provided by Provider pursuant to Section 2.3; the costs of the appraisal(s) shall be borne by Provider if such Fair Market Value results in a value less than the value provided by Provider pursuant to Section 2.3.

#### 2.5 Removal of System at Expiration.

If Purchaser does not exercise its purchase option under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in substantially the same condition it was in on the Effective Date, ordinary wear and tear excepted. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost.

2.6 Provider Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, including but not limited to restoring the Premises in accordance with the standards set out in Section 2.5:

(a) The Provider determines that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or

would adversely affect the electricity production from the System as designed.

(c) Provider has not received a fully executed (i) if requested by Provider, a site lease agreement with Purchaser, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation or as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.

(e) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(f) Provider has not received evidence reasonably satisfactory to it that (x) interconnection services will be available with respect to energy generated by the System at a cost that does not make the Project economically unattractive to Provider and (y) the System will be eligible for Net Metering.

(g) Provider has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(h) Either (i) Purchaser's S&P or Moody's Sr. Unsecured or Underlying rating falls below BBB- or Baa3, or (ii) Purchaser is not rated by S&P or Moody's and does not meet or exceed the following criteria: *ability to provide* three (3) years audited financial statements; asset to liability ratio of greater than 1:1; minimum five (5) years operating history; ability to demonstrate sustainable operations with either consistent profitability or consistent cash flow positive fiscal years.

2.7 Purchaser Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Notice To Proceed Date, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) There is an adverse change in the assumptions underlying this Agreement, including but not limited to, electricity price forecasts, the regulatory environment, incentive programs or federal or state tax code that could reasonably be expected to adversely affect the economics of the installation for Purchaser.

(b) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(c) Purchaser has not received evidence reasonably satisfactory to it that (x) interconnection services will be available with respect to energy generated by the System and (y) the System will be eligible for Net Metering.

(d) There is a change in federal, state or local Applicable Law that leads Purchaser to reasonably believe that it is unlikely that Provider will be able to obtain all necessary Governmental Approvals.

(e) There is an inability to obtain necessary Governmental Approvals including but not limited to local land use boards approvals.

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. Provider shall obtain a Phase 1 for the Premises and, if required by the Phase 1, a Phase 2. At its request, prior to the Notice To Proceed Date, Purchaser shall have the right to review and approve all construction plans and designs, including engineering evaluations of the impact of the System to ensure that the installation of the System will not present any public safety issues or negatively impact the functioning of the Premises, such approval not to be unreasonably withheld, conditioned or delayed. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical. This provision may be altered by a letter amendment signed by both Parties hereto.

3.2 Approvals; Permits. Purchaser shall assist Provider in obtaining all necessary

approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR.

### 3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States including, but not limited to, such standards required by the Local Electric Utility. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser representative to observe testing.

(b) Commercial Operation shall occur when the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice and supporting documentation to Purchaser to that effect, and the date of such notice shall be the Commercial Operation Date.

### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. The Local Electric Utility will install and maintain the Net Energy Meter, which will measure the net amount of electrical energy flowing to and from the Premises, or Net Metered Production. Provider may, at its discretion, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may also, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility at the Premises.

4.3 Meter Accuracy. On behalf of Purchaser as the Local Electric Utility's customer of record, Provider may, on its own initiative, and shall

upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the Net Energy Meter. When meter testing is at the request of Provider, any costs for such meter tests shall be responsibility of Provider.

#### 4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation, or (ii) terminate the Agreement pursuant to Section 2.2. Purchaser shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Purchaser and Provider shall amend the Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing Party in connection with the substitute Premises. If Purchaser is unable to obtain such consents and releases for a substitute Premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refiling the security interest of Provider's Financing Party in the System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of the roof of the Premises, which shall be as leak proof as it was prior to removal of System. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Solar Services, and Purchaser shall reimburse Provider for any lost revenue during any transfer or

construction time period (the "Transfer Time"), including any lost revenue associated with Payments, any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Transfer Time. For the purpose of calculating Payments and lost revenue for such Transfer Time, Solar Services for each month of said Transfer Time shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation).

(b) System Disruptions. In the event that (x) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (y) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Disruption Period. For the purpose of clauses (ii) above, the Parties agree that during years 4 through 20 (but not years 1 through 3) of the Term of the Agreement, Purchaser shall be afforded a one time period of fifteen (15) days which may be used consecutively or in a periods of at least twenty-four (24) hours each ("Allowed Disruption Time") during which the System shall be rendered non-operational by Provider. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes. For the purpose of calculating Payments and lost revenue for such Disruption Period, Solar Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).



## 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. Purchaser agrees to purchase the Net Metered Production generated by the System during each relevant month of the Term.

5.2 Estimated Annual Production. The annual estimate of electricity generated by the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule 4 of the Special Conditions.

5.3 Environmental Attributes and Solar Incentives.

(a) Purchaser's purchase does not include Solar Incentives, which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3(a). Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 or Section 15.3 and, as a result thereof, the value of the Solar Incentives generated by the System is reduced, Purchaser shall pay to Provider the value of such reduction.

(b) Purchaser and Provider acknowledge that as of the Effective Date, the System will not be generating any recognized Environmental Attributes. If there is any change in Applicable Law such that the System may generate Environmental Attributes, the Parties shall work together to register the System or Environmental Attributes as necessary, and shall equally share any such Environmental Attributes.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place

all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of Purchaser, 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 of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.5 Net Energy Metering. The Parties will work cooperatively and in good faith to meet all Net Energy Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements. The Parties agree that (a) Provider shall transmit such Net Metered Production into the Local Electric Utility system on behalf of and for the account of Purchaser, and (b) Purchaser (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Payment") for the electricity generated by the System and delivered to the Local Electric Utility during each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the System for the relevant month multiplied by (y) the kWh Rate as contained in Schedule 2 of the Special Conditions.

6.2 Invoice. Purchaser shall provide Provider with a copy of each monthly bill from the Local Electric Utility in Purchaser's capacity as Customer-Generator of the System within five (5) business days of receipt. Following Provider's receipt of such monthly bill, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in the Special Conditions.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Purchaser does not have electronic funds transfer capability, the Parties shall agree to an alternative method of payment. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.5 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement for not paying such disputed amounts and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue for the benefit of Provider at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid. If an amount disputed by Purchaser is paid when due and subsequently deemed to not have been due, interest shall accrue for the benefit of Purchaser at the Stated Rate on such amount from the date paid until such amount is refunded to Purchaser.

6.6 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment, the quantity of Net Metered Production is decreased (the "Electricity Deficiency Quantity") and the Local Electric Utility reduces the amount of Net Metering Credits awarded for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Net Metered Production is increased (the "Electricity Surplus Quantity") and the Local Electric Utility increases the amount of Net Metering Credits for such period, Purchaser shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period. In neither event will interest accrue on payments owed.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate. If System fails to generate electricity for more than ninety (90) consecutive days, absent a Force Majeure Event, Provider shall pay Purchaser the difference between the actual average utility kWh price paid by Purchaser for electricity procured from the Local Electric Utility minus the kWh Rate multiplied by the Estimated Annual Production for the time period commencing on the ninetieth day and ending on the date the System is operational.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including, but not limited to, fees associated with National Grid Form K, system upgrades and operation and maintenance carrying charges or fees ("Interconnection Obligations"). If Purchaser receives an invoice for any such Interconnection Obligations, Purchaser shall promptly pay such invoice and submit it to Provider, who shall promptly reimburse Purchaser for such Interconnection Obligations. In no event shall Purchaser be ultimately responsible for any Interconnection Obligations regardless whether the System is constructed.

(e) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations that shall comply with all

Applicable Laws pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Notwithstanding anything to the contrary herein, in no event shall Provider have any liability or obligation with respect to the Surrounding Land, any Pre-Existing Environmental Condition, any uses of the Premises prior to the Effective Date or in connection with any other pre-existing or latent defects or conditions with respect to the Premises or any conditions caused by Purchaser or its agents or representatives during the Term.

(f) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. In the event of damage to Purchaser's premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair said premises to the condition existing prior to such damage.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or

any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider an commercial license coterminous with the Term, containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring.

(i) Purchaser hereby covenants that (x) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (y) Purchaser shall not interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that, as requested by Purchaser, Purchaser and Provider shall work together to arrange for a mutually agreeable time for Purchaser to access to the System and Purchaser shall have the right to observe the Installation Work and System removal.

(ii) If requested by Provider, Provider shall enter into a site lease with Purchaser, on such terms and conditions as the parties may reasonably agree.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement for sufficient space at the Premises for the temporary storage and staging of tools, materials and

equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Sunlight Easements. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System.

(g) Customer-Generator. Purchaser shall execute documents to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the Customer-Generator of each Local Electric Utility meter related to the System for purposes of the Net Metering Rules.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation 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;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein.

(c) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 Representations Regarding Landfill. The Premises was previously used as a landfill site by the Purchaser and the provisions of NYCRR Part 360 "Landfill Reclamation" ("Part 360") may apply to the Premises. Notwithstanding anything to the contrary in this Agreement, Purchaser shall be solely responsible for compliance with all Applicable Law, including Part 360, that relate to (i) the conditions or uses of the Premises and the Surrounding Land prior to the Effective Date, including without limitation, use of such area as a landfill and all Pre-Existing Environmental Conditions and (ii) any actions undertaken by Purchaser, its representatives or agents during the Term. In no event shall Provider be responsible for compliance with any Applicable Law relating to any conditions or uses of the Premises or Surrounding Land prior to the Effective Date, including without

limitation, the use of such area as a landfill or the presence of any Pre-Existing Environmental Conditions or any actions undertaken by Purchaser, its representatives or agents during the Term.

8.4 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 4.1, AND 7.1 AND THIS SECTION 8, THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

#### 9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of Solar Services to Purchaser (other than income taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

#### 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action or inaction). A Force Majeure Event shall not be based on the economic hardship of either Party. Natural phenomena shall not be considered a Force Majeure Event unless such event causes physical damage to the System.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Net Metering Credits delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider's obligation to remove said system in accordance with Section 2.5 and any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

### 11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within forty-five (45) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such forty-five (45) day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within forty five (45) days from receipt of notice from Provider of such past due amount, provided that once per calendar year, Purchaser shall have an additional thirty (30) days before Provider can declare a Purchaser Default.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2, and (B) Provider may exercise any other remedy it may have at law or equity or under the Agreement.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof.

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement claims, claims related to Pre-Existing Environmental Conditions, claims related to the Surrounding Land's use as a landfill, (ii) any act or omission of any Purchaser Indemnified Party or any of their respective agents or representatives during the Term, (iii) any obligation of Purchaser to pay the Early Termination Fee, and (iv) any obligation of Provider to remove or restore the System as provided herein.

12.3 Notwithstanding the foregoing in Section 12.1 and 12.2, the limitations of liability shall not apply for damages that occur after the expiration or termination of the Agreement, including but not limited to damages occurring from the removal of the System by the Provider.

### 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate provided such assignment occurs no later than ninety (90) days after the Commercial Operation Date, and that Affiliate has the financial wherewithal and ability to perform Provider's obligations at least equal to Provider; (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit A of these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 of the Special

Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form as Provider or the Financing Party may reasonably request.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by

facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

## 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall

be considered Confidential Information for purposes of this Article, except as set forth in Section 15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(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.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, Purchaser's use of solar or renewable energy from the System and any Environmental Attributes and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement, Purchaser's use of solar or renewable energy from the System and any Environmental Attributes; provided that no such publicity releases or other statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its



sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

## 16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, to the extent permitted by applicable law, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work or System Operations and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss: (i) to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party, (ii) related to any pre-existing or latent defects or conditions with respect to the Premises or Surrounding Land or any Pre-existing Environmental Conditions, (iii) related

to the use of the Surrounding Land as a landfill, or (iv) related to any act or omission of any Purchaser Indemnified Party or any of their respective agents or representatives prior to or during the Term.

16.2 Purchaser's Indemnity. Subject to Section 12, to the extent permitted by applicable law, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Purchaser's negligence or willful misconduct. Purchaser shall additionally indemnify and hold harmless Provider Indemnified Parties from and against any Losses that arise from or are related to: (i) any conditions, occurrences or activities (including Pre-Existing Environmental Conditions) that first existed prior to the Effective Date, except to the extent such Pre-Existing Environmental Conditions are recognized, or should have reasonably been recognized, in the Phase I, if applicable, the Phase 2, or the feasibility study(ies) conducted by Provider to satisfy the testing requirements contained in the Purchaser's request for proposals, (ii) uses of the Premises or Surrounding Land prior to the Effective Date, (iii) use of the Surrounding Land as a landfill after the Effective Date or (iv) any act or omission of any Purchaser Indemnified Party or any of their respective agents or representatives prior to or during the Term. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

## 17. INSURANCE.

17.1 Generally. Purchaser and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Statutory NYS Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) general aggregate, One Million Dollars (\$1,000,000) per occurrence; (c) pollution liability insurance in the amount of One Million Dollars (\$1,000,000), (d) commercial automobile insurance for owned, non-

owned and hired automobiles in a combined single limit of One Million Dollars (\$1,000,000); and (e). excess liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence aggregate. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The amount and terms of the property insurance coverage will be determined as the replacement cost of the equipment. Commencing on the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date, Provider shall either (x) provide a guaranty of Sun Edison LLC with respect to Provider's System removal and restoration obligations hereunder, or (y), secure a bond in an amount specified in the Special Conditions to secure removal of the System and restoration of the Premises upon termination of this Agreement.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained.

17.3 Additional Insureds. Provider's insurance policy shall be written on an occurrence basis and shall include the Purchaser as an additional insured on a primary and non-contributory basis.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

## 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by

an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Provider to enforce its rights against Purchaser under this Agreement.

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.4 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without reference to any choice of law principles. The Parties agree that the courts of New York and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by

Applicable Law. Any action commenced in accordance with this Section 18.8 shall be in the County of Saratoga. .

18.9 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 [Intentionally Omitted]

18.12 [Intentionally Omitted]

18.13 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.15 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.16 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

*[Remainder of page intentionally left blank.]*

These General Terms and Conditions are witnessed and acknowledged by SunEdison and Purchaser below. For the avoidance of doubt, neither SunEdison nor Purchaser shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

“SUNEDISON”: SUNEDISON GOVERNMENT SOLUTIONS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

“PURCHASER”: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**Exhibit A**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Purchaser's default the Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

(d) **Right to Cure.**

i. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The

Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

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## SOLAR POWER & SERVICES AGREEMENT

### SPECIAL CONDITIONS

This Solar Power & Services Agreement (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_, 20\_\_ (the “Effective Date”), between SunEdison Government Solutions, LLC, a Delaware limited liability company (“Provider”), and [ ], a [ ] (“Purchaser”; and, together with Provider, each, a “Party” and together, the “Parties”).

#### WITNESSETH:

WHEREAS, Provider intends to construct, install, own, operate, and maintain a solar photovoltaic System at the Premises described on Schedule 1;

WHEREAS, the Parties intend that, pursuant to the Remote Net Metering Rules, the System will qualify as a remote net metering facility and will generate Net Metering Credits;

WHEREAS, Purchaser is willing to purchase all of the electricity to be generated by the System and to serve as Customer-Generator of the System, and Provider is willing to sell all of the electricity to be generated by the System to Purchaser as Customer-Generator under certain terms of this Agreement;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of \_\_\_\_, 20\_\_ (“General Conditions”), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the “Special Conditions” referred to in the General Conditions.

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INCORPORATION OF GENERAL CONDITIONS. The General Conditions are incorporated herein as if set forth in their entirety.
2. Schedules. The following are the respective Schedules to the Special Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information
Schedule 6	Time of Payment
Schedule 7	Term

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

**SUNEDISON GOVERNMENT  
SOLUTIONS, LLC**

[ ]

By: SUN EDISON LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date



## SCHEDULES

### **I. Schedule 1: Description of Premises and System**

<b>Solar System Premises:</b>	[WEIBEL AVE, SARATOGA SPRINGS, NY 12866] [to be updated with the specific metes and bounds description of the location of the System]
<b>Anticipated Rebate or Subsidy</b>	\$.56/W from NYSERDA
<b>Solar System Size:</b>	2598.48 kW (DC) (representing an initial estimate, which may vary depending on the final design of the System)
<b>Scope:</b>	Design and supply grid-interconnected, ground mounted solar electric (PV) system.
<b>Module:</b>	MEMC 325W or equivalent
<b>Inverter:</b>	IEEE 1547 qualified
<b>Effective Date</b>	_____, 2014

### **II. Schedule 2 - - kWh Rate**

The kWh Rate with respect to the System under the Agreement shall be \$0.116/kWh

**III. Schedule 3 – Early Termination Fee**

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

<b>Early Termination Occurs in Year:</b>	<b>Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)</b>
1*	3.95
2	3.17
3	2.77
4	2.47
5	2.16
6	1.84
7	1.77
8	1.70
9	1.63
10	1.55
11	1.48
12	1.40
13	1.31
14	1.23
15	1.18
16	1.09
17	1.01
18	0.93
19	0.86
20	0.78

<b>Purchase Date Occurs on the 91<sup>st</sup> day following : (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)</b>	<b>Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*</b>
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	--
	--
	--
	--
5 <sup>th</sup> Anniversary	1.34
6 <sup>th</sup> Anniversary	1.27
7 <sup>th</sup> Anniversary	1.20
8 <sup>th</sup> Anniversary	1.13
9 <sup>th</sup> Anniversary	1.05
10 <sup>th</sup> Anniversary	0.98
11 <sup>th</sup> Anniversary	0.90
12 <sup>th</sup> Anniversary	0.81
13 <sup>th</sup> Anniversary	0.73
14 <sup>th</sup> Anniversary	0.68
15 <sup>th</sup> Anniversary	0.59
16 <sup>th</sup> Anniversary	0.51
17 <sup>th</sup> Anniversary	0.43
18 <sup>th</sup> Anniversary	0.36
19 <sup>th</sup> Anniversary	0.28

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.

**IV. Schedule 4 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	3,266,289	11	3,106,601
2	3,249,958	12	3,091,068
3	3,233,708	13	3,075,613
4	3,217,540	14	3,060,234
5	3,201,452	15	3,044,933
6	3,185,445	16	3,029,709
7	3,169,517	17	3,014,560
8	3,153,670	18	2,999,487
9	3,137,901	19	2,984,490
10	3,122,212	20	2,969,567

The values set forth in the table above are estimates, of approximately how many kWhs are expected to be generated annually by the System. The table will be updated upon final design of the System.

**V. Schedule 5 – Notice Information**

**Purchaser:**

[ Please insert ]

**Provider:**

SunEdison Government Solutions, LLC  
c/o Sun Edison LLC  
12500 Baltimore Avenue  
Beltsville, MD 20705  
1-888-786-3347

*With a copy to*

General Counsel  
44 Montgomery Street, Suite 2200  
San Francisco, CA 94104  
Tel. (443) 909-7200  
Fax (443) 909-7121

**Financing Party:**

[To be provided by Provider when known]

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within forty-five (45) days after the date of the applicable Invoice Date.

**VII. Schedule 7 – Initial Term**

The Initial Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date, unless and until terminated earlier pursuant to the provisions of the Agreement.