*July 2, 2009 Draft*

# SOLAR ENERGY PURCHASE AGREEMENT

## BETWEEN

## WHITE OAK SOLAR ENERGY, LLC

## AND

## CITY OF DOVER, DELAWARE

**- [date] -**

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**SOLAR ENERGY PURCHASE AGREEMENT**
**BETWEEN**
**WHITE OAK SOLAR ENERGY, LLC**
**AND**
**CITY OF DOVER, DELAWARE**

This Solar Energy Purchase Agreement (this "PPA") is made this ____ day of _____, 2009, by and between (i) **White Oak Solar Energy, LLC** ("Seller"), a Delaware limited liability company with a principal place of business at c/o LS Power Development, LLC, Two Tower Center, 11th Floor, East Brunswick, NJ 08816, and (ii) **City of Dover, Delaware** ("Company"), a municipal corporation with a principal place of business at 15 E. Loockerman Street, Dover, Delaware 19903. Seller and Company are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, Seller desires to develop, design, construct, own or lease, and operate a solar photovoltaic electric generating facility with an expected total maximum power output of approximately 11.2 MWp/9.3 MWac, and which is further defined below as the "Facility"; and

WHEREAS, Seller intends to locate the Facility at Garrison Tract located within the City of Dover pursuant to the terms of a Ground Lease to be entered into by and between Seller and Company (the "Facility Site Lease"), and to interconnect the Facility with the Interconnection Provider's System at the Point of Delivery; and

WHEREAS, Seller desires to sell and deliver to Company at the Point of Delivery the Solar Energy Output generated by the Facility and any and certain associated or correlative Renewable Energy Credits and other Environmental Attributes, and Company desires to buy the same from Seller.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## Article 1 – Definitions and Rules of Interpretation

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Prudent Industry Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

(A) The masculine shall include the feminine and neuter.

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(B) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this PPA.

(C) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) where the PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

1.2 Interpretation with Interconnection Agreement. The Parties recognize that Seller will enter into a separate Interconnection Agreement with Company in its role as Interconnection Provider. Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Company's rights, duties and obligations under this PPA.

1.3 Interpretation of Arrangements for Electric and Natural Gas Supply to the Facility. This PPA does not provide for the supply of retail electric power or natural gas to the Facility ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Facility is located ("Local Provider") for the supply of House Energy. Seller's arrangements for the supply of House Energy to the Facility shall be separate and free-standing arrangements. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Company or an Affiliate of Company. Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy to the Facility shall alter or modify Seller's or Company's rights, duties and obligations under this PPA. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility and subject to Seller's obligations to supply Solar Energy Output to the Company as specified in this PPA, Seller shall obtain House Energy exclusively from the Local Provider.

1.4 Definitions. The following terms shall have the meanings set forth herein:

"Additional Maintenance Outages" has the meaning assigned to it in Section 10.5 hereof.



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"Adjusted Estimated Solar Output" shall mean the Estimated Solar Output, reduced by the amount of any Curtailed Energy and any other Solar Energy Output measured in MWh that Seller would have produced during a Force Majeure event.

"Adjustment Factor" shall mean a percentage equal to: (a) the Annual Capacity Factor minus the PJM Capacity Factor; divided by (b) the PJM Capacity Factor; and the resulting fraction is then multiplied by the Capacity Percentage.

"Affiliate" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"After-Tax Basis" means, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the "Base Payment") supplemented by a further payment (the "Additional Payment") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions (including depreciation) arising from the underlying event giving rise to the Base Payment and the Additional Payment as determined by such Party), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at thirty five percent (35%) for the relevant period or periods, and state and local Taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes. Notwithstanding anything to the contrary in this definition of "After-Tax Basis", if the Base Payment does not constitute taxable income (without regard to future or current deductions) to the Party receiving the Base Payment, the Additional Payment shall equal $0.00.

"Annual Capacity Factor" shall mean the capacity factor ascribed to the Facility by PJM for Behind-the-Meter Generation based on actual average performance by the Facility on the five coincidental peak periods and one coincidental days for the previous Year; provided, however, that, for purposes of this PPA, such PJM ascribed capacity factor shall be adjusted by revising the PJM calculation based on any adjustment made by PJM in its determination of the Facility's capacity factor based on: (i) any Curtailed Energy and any Solar Energy Output that would have been generated by the Facility and delivered to the Point of Delivery had the Facility's generation not been limited by: (x) Company maintenance (scheduled or unscheduled); or (y) a Force Majeure event not directly impacting the ability of the Facility to generate and deliver Solar Energy Output to the Point of Delivery; and (ii) any failure of Company to comply with PJM tariffs, manuals or other rules or any limits that PJM may impose on the maximum amount of Behind-the-Meter Generation.



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"Applicable Law" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority and all Non-Governmental Compliance Obligations, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"Back-Up Metering" has the meaning ascribed in Section 5.3(D).

"Bankruptcy Code" means the United Stated Bankruptcy Code, 11 U.S.C. § 101, *et seq*, as amended from time to time.

"Business Day" means any calendar Day that is not a Saturday, a Sunday, or a NERC, state and/or federal recognized holiday where banks are permitted or authorized to close.

"Capacity Percentage" shall mean, for each Year, the Capacity Percentage listed on Schedule II for the Year.

"Capitalized O&M Costs" shall mean costs for the repair or replacement of defective or worn-out equipment required to be capitalized pursuant to GAAP.

"Capitalized Operations and Maintenance Payment" has the meaning set forth in Section 8.1(A)(iv).

"Change in Applicable Law" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any Applicable Law or Non-Governmental Compliance Obligations that takes effect after the Effective Date, including Applicable Laws regarding RECs, Environmental Attributes, Taxes, and the generation and sale of electricity and Non-Governmental Compliance Obligations.

"Code" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"Commercial Operation" means operation of the Facility beginning on the Commercial Operation Date and continuing through the Term of this PPA.

"Commercial Operation Date" or "COD" means the date on which (i) the Demonstrated Capacity is determined by the Tests to be at least 5 MWac of Solar Energy at the Point of Delivery, as adjusted for the level of solar irradiation and ambient conditions at the time of the Commissioning Test; (ii) Seller determines, in its sole discretion, that the Facility is ready to operate under the terms of this Agreement; and (iii) Seller provides to Company notice stating that the Commercial Operation Date has been achieved for purposes of this Agreement.



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"Commissioning" or "Commissioned" means, with respect to any Unit, the commencement of the period during which such Unit has begun Testing and ending when such Unit has been approved for the production of Solar Energy and authorized to commence delivery of Solar Energy Output, provided, however, that for certain tax and other corporate purposes, in accordance with Applicable Law, Commissioning shall be deemed to occur when any measurable amount of Solar Energy Output is first generated at the Facility and delivered and sold to Company consistent with the provisions of this PPA.

"Commissioning Tests" has the meaning assigned to it in Section 10.2.

"Company Delivery Excuse" shall mean: (i) any breach by Company of its obligations under the PPA or the Interconnection Agreement; (ii) any delay or failure by Company in giving any approval within the times required under this PPA; (iii) any delay or failure of Company to accept Solar Energy Output or Environmental Attributes as required under this PPA because of any failure of Company to obtain or maintain adequate transmission arrangements, any failure to comply with Applicable Law, as a result of Company's negligence, or as a result of Unpermitted Company Maintenance; or (iv) any curtailment or disconnection of the Facility from the Interconnection Provider's System in excess of 24 hours per Year, to the extent such curtailment or disconnection is not caused by Seller's breach of the Interconnection Agreement; in each case, to the extent that that any of the foregoing actually and proximately prevents the Seller, in whole or in part, from performing any of its obligations or satisfying any conditions under this PPA.

"Company Entities" has the meaning ascribed to it in Section 17.1.

"Confidential Information" has the meaning ascribed to it in Section 20.12(D).

"Credit Event" shall mean: (x) if the unenhanced credit rating assigned to the Company's Electric Revenue Bonds is reduced to below investment grade by Fitch Ratings, Ltd., Moody's Investor's Service, Inc. or Standard & Poor's Ratings Services, or any such rating agency has suspended or withdrawn such unenhanced credit rating for credit-related reasons, or (y) if Company does not make payment to Seller when due more than once in any twelve (12) month period and Company does not prepare a cure plan to insure compliance with the payment requirements under this PPA that is satisfactory to Seller within five (5) Days of such late payment.

"Credit Event Period" shall mean the period starting either: (i) no later than thirty (30) Days after a Credit Event other than a Credit Event arising from Company's failure to make two (2) consecutive payments; or (ii) no later than five (5) Days after a Credit Event that arises as a result of Company's failure to make two (2) consecutive payments; and ending when the Credit Event is no longer continuing.

"Curtailed Energy" has the meaning ascribed to it in Section 8.2(A).



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"Curtailed Environmental Attributes" has the meaning ascribed to it in Section 8.2(A).

"Daily LD Amount" has the meaning ascribed to it in Section 4.1(D).

"Day" means a period beginning at 12:00 a.m. EPT on any Day and ending at 11:59 p.m. EPT on such Day.

"Default Rate" has the meaning assigned to it in Section 9.4.

"Demonstrated Capacity" means the Facility's actual net generating nameplate capacity rating, measured in MWac, as determined by the Commissioning Tests, as adjusted to PVUSA Test Conditions using the PVUSA power equation, or similar methodology commonly in use by the solar industry at the time of the Commissioning Tests. PVUSA Test Conditions are defined as (i) 1,000 watts per square meter solar irradiance, (ii) 20 degrees Celsius ambient temperature, and (iii) 1 meter per second wind speed.

"Disclosing Party" has the meaning ascribed to it in Section 20.12(A).

"Disputing Party" has the meaning assigned to it in Section 9.5 hereof.

"Dollars" means the lawful currency of the United States of America.

"DPSC" means the Delaware Public Service Commission or any successor agency.

"Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Saving Time.

"Effective Date" means the date of this PPA.

"Electric Interconnection Point" means the physical point at which electrical interconnection is made between the Facility and the Interconnection Provider's System. Under this PPA, the Electric Interconnection Point is the Point of Delivery.

"Electric Metering Device(s)" means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Facility. Electric Metering Devices include the meter, the metering current transformers and the metering voltage transformers.

"Emergency Condition" means a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Interconnection Provider to cause a significant disruption to the Interconnection System or otherwise be required in accordance with



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the requirements of the NERC, PJM and the RRO, or any system condition not consistent with Prudent Industry Practices.

"Environmental Attribute Payment Rate" has the meaning assigned to it in Section 8.1(A)(ii).

"Environmental Attribute Percentage" means 15%; provided, however, that if on the Commercial Operation Date, Seller has long-term contracts in effect for the sale of at least 70% but less than 100% of its Environmental Attributes, the Environmental Attribute Percentage under this PPA shall automatically be adjusted on the Commercial Operation Date to equal the lesser of: (x) 15% divided by the aggregate percentage of Environmental Attributes that Seller is obligated to sell under long-term contracts in effect on the Commercial Operation date. For example, if in addition to this PPA, Seller has entered into long-term contracts to sell an additional 60% of its Environmental Attributes, the Environmental Attribute Percentage under this PPA will be increased to 20% (15% / (15% + 60%)); or (y) 1.5 divided by the Facility Capacity.

"Environmental Attributes" means all attributes of an environmental or similar nature that are created or otherwise arise from the Facility's generation of electricity from Solar Energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, excluding Tax Credits. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, greenhouse gas credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Solar Energy. Environmental Attributes include, those currently existing (RECs and SRECs) or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change ("UNFCCC") and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, together with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes. Environmental Attributes shall be based on the generation of electricity by the Facility and shall not be reduced based on Company's use of the Solar Energy Output, including whether Company uses the Solar Energy Output for its own use or sells it at retail.

"EPC Contract" means the engineering, procurement and construction contract(s) or other similar documents entered into by Seller in relation to the engineering, procurement and construction of the Facility.

"Estimated Solar Output" means the amount of Solar Energy Output measured in MWh that Seller estimates the Facility will produce in any given Year, as



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shall be specified in writing by Seller to Company on or before the date of execution of the EPC Contract, as may be adjusted pursuant to Section 3.4.

"Event of Default" has the meaning set forth in Article 12.

"Facility" means Seller's solar electric generating facility and Seller's Interconnection Facilities, as identified and described in Article 3, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Electric Interconnection Point: Seller's equipment, buildings, all of the generation facilities, including step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Solar Energy Output subject to this PPA.

"Facility Capacity" means the designed aggregate nameplate capacity rating of the Facility of 9.3 MWac, which Facility Capacity may be adjusted pursuant to Section 3.4.

"Facility Site Lease" means the lease between Company, as lessor, and Seller as lessee in respect of the land on which the Facility will be built, or such other lease agreement between Seller and the provider of the leasehold property in respect of same.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"Finance Rate" means [redacted].

"Financial Closing" means the fulfillment of each of the following conditions:

(A) the execution and delivery of the Financing Documents; and

(B) all conditions precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this PPA) are satisfied or waived.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, sale-leaseback agreements, guarantees, security agreements, lease financing agreements, partnership and limited liability company operating agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt and/or equity financing (including the monetization of Tax Credits and accelerated depreciation by equity investment, issuance of cash in lieu of Tax Credits and/or sale-leaseback agreements) for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all



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amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

"Financing Parties" means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller or its Affiliates, whether debt or equity, or a combination thereof, for the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

"Force Majeure" has the meaning set forth in Section 14.1(A).

"Forced Outage" means a reduction of, or cessation in the delivery of, or inability to deliver, Solar Energy Output that is not the result of (i) a Scheduled Maintenance Outage, (ii) a Force Majeure event, (iii) a Company Delivery Excuse, (iv) an Emergency Condition, or (v) changes in weather and ambient conditions.

"GAAP" means Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board as modified from time to time.

"GATS" means the generation attribute tracking system established by PJM.

"Governmental Approval" means any authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Credits for inclusion in Company's renewable energy portfolio pursuant to the Delaware Renewable Energy Act and recovery of the related costs, and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"House Energy" has the meaning assigned to it in Section 1.3.

"Interconnection Agreement" means the separate agreement between Seller and the Interconnection Provider for interconnection of the Facility to the



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Interconnection Provider's System, as such agreement may be amended from time to time.

"Interconnection Facilities" means Interconnection Provider's Interconnection Facilities and Seller's Interconnection Facilities.

"Interconnection Provider" means the City of Dover, Delaware, acting pursuant to its applicable procedures.

"Interconnection Provider's Interconnection Facilities" means the facilities and equipment installed by the Interconnection Provider after the Electric Interconnection Point for the direct purpose of interconnecting the Facility with the Interconnection Provider's distribution system. Arrangements for the installation and operation of the Interconnection Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

"Interconnection Provider's System" means the contiguously interconnected electric transmission and sub-transmission and distribution facilities, including Interconnection Provider's Interconnection Facilities, over which the Interconnection Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"Issuer" has the meaning assigned to it in Section 11.1(C).

"kW" means one or more kilowatts of electricity, as the context requires.

"kWh" means kilowatt hour.

"LD Period" means a period starting on the Required Commercial Operation Date, and ending on the earlier to occur of: (i) the completion of a Commissioning Test with a Demonstrated Capacity of the Facility equal to or greater than the Facility Capacity; or (ii) the six (6) month anniversary of the Required Commercial Operation Date.

"Letter(s) of Credit" has the meaning assigned to it in Section 11.1(B).

"Local Provider" has the meaning assigned to it in Section 1.3.

"Month" means a calendar month.

"Monthly Billing Period" means the period during any particular Month in which either Test Energy and/or Solar Energy Output has been generated by Seller for Company and delivered to the Point of Delivery for sale to Company, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.



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"NERC" means the North American Electric Reliability Council or any successor organization.

"Non-Governmental Compliance Obligations" means all obligations to comply with existing national and regional reliability standards and rules and regulations related to Environmental Attributes, including standards set by NERC, FERC, PJM, GATS, the DPSC, and any RRO and any successor agencies.

"Non-Scheduled Maintenance Period" has the meaning assigned to it in Section 10.4(A).

"O&M Costs" means all direct operations and maintenance expenses of the Facility, including labor costs, operation and maintenance fees, costs for the repair or replacement of defective or worn-out equipment not required to be capitalized pursuant to GAAP, rent and other payments under the Facility Site Lease, payments for water and other utilities, House Power, site security, interconnection charges, Change in Applicable Law costs not required to be capitalized pursuant to GAAP as described in Section 18.4(A), insurance, property taxes, and gross receipt taxes for ongoing energy and Environmental Attribute sales under the PPA.

"O&M Records" has the meaning assigned to it in Section 13.2(A).

"Operating Parameters" has the meaning assigned to it in Section 10.7(A).

"Operation and Maintenance Agreement" means that certain operation and maintenance agreement between Seller and a third-party with respect to the Facility.

"Operations and Maintenance Payments" has the meaning assigned to it in Section 8.1(A)(iii).

"Permitted Company Maintenance" shall mean Company maintenance on the Interconnection Provider's System that is not Unpermitted Company Maintenance.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"PJM" means PJM Interconnection, LLC, or any successor organization thereto.

"PJM Capacity Factor" shall mean, for each Year, the PJM Capacity Factor listed on Schedule II for the Year.

"PJM Facility Capacity" means the Facility's capacity attributes, defined by PJM for solar intermittent resources interconnected behind the meter in PJM.



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"Point of Delivery" means the electric system point at which Seller makes available to Company and delivers to Company the Solar Energy Output being provided by Seller to Company under this PPA. The Point of Delivery shall be specified in the Interconnection Agreement.

"PPA" means this Solar Energy Purchase Agreement between Seller and Company, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"Project Consents" means all consents, permits, licenses, variances, waivers, approvals and other third-party actions necessary for Seller to fulfill its obligations hereunder.

"Project Contracts" means this PPA, the EPC Contract, the Interconnection Agreement, the Facility Site Lease, the Operation and Maintenance Agreement, and agreements for the sale of all Environmental Attributes not sold to Company pursuant to this Agreement.

"Projected Schedule" means the projected time-frame for delivery of a specific quantity of Solar Energy Output by Seller to Company at the Point of Delivery during the term of this PPA.

"Prudent Industry Practice(s)" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by operators of utility electric generation stations of a type and size similar to those constituting the Facility, which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good, safe, and prudent engineering practices in connection with the operation, maintenance, repair, and use of equipment and facilities and commensurate standards of safety, performance, dependability, efficiency, and economy that conform to all material operation and maintenance standards recommended by the Facility's equipment suppliers and manufacturers and Applicable Law. Prudent Industry Practices are not intended to be limited to the optimum practice or method to the exclusion of others, but rather to be a spectrum of possible but reasonable practices and methods.

"Receiving Party" has the meaning ascribed to it in Section 20.12(A).

"Receiving Party's Representatives" has the meaning assigned to it in Section 20.12(B).

"Renewable Energy Credits" or "RECs" has the meaning set forth in the Delaware Renewable Energy Portfolio Standards Act (26 Del. C. § 351 et. seq.), including any and all Solar Renewable Energy Credits ("S-RECs"), also as defined therein. "RECs" and "S-RECs" do not include any Tax Credits or depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.



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"Required Commercial Operation Date" means [December 1, 2010], subject to adjustment as described in Section 4.1.

"Restoration" has the meaning assigned to it in Section 14.5(B).

"Restoration Report" has the meaning assigned to it in Section 14.7.

"Restoration Schedule" has the meaning assigned to it in Section 14.5(B).

"RRO" means any regional reliability organization with jurisdiction over Seller as a generator of electricity and operator of the Facility.

"Scheduled Maintenance Outage" means a time during which the Facility is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and the Company.

"Seller Entities" has the meaning ascribed to it in Section 17.1.

"Seller's Interconnection Facilities" means the equipment between the single collection point for the A/C wiring from the output of the project inverters and the Electric Interconnection Point as well as all transmission facilities required to access the Interconnection Provider's System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, it includes Seller's relays, and load control equipment as provided for in the Interconnection Agreement.

"Senior Debt Rating" means the rating assigned to an Issuer's senior unsecured long-term debt obligations (not supported by third party credit enhancements) or, if Issuer does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such Issuer by Standard & Poor's, Moody's or any other rating agency agreed to by the Parties.

"Site" means the parcel of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in the Facility Site Lease.

"Solar Energy" means the electric energy generated by the Facility using solar electric generation technologies.

"Solar Energy Output" means the net unit contingent electric energy generated in MWh using solar electric generation technologies delivered at nominal voltage to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.3. Solar Energy Output shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.



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"Solar Energy Payment" has the meaning assigned to it in Section 8.1(A).

"Solar Energy Payment Rate" means the rate in $/MWh set forth in Schedule I for "Solar Energy Payment Rate", as may be adjusted pursuant to Section 8.6.

"System Control Center" or "SCC" means Company's representative(s) responsible for dispatch of generating units and scheduling energy and capacity from the Facility with PJM.

"Tax Credits" means investment tax credits under Section 48 of the Code as in effect on the date of this PPA, any cash grant in lieu of investment tax credits as described in Section 1102 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), any successor or other provision providing for a federal, state or local tax credit, cash grant, tax exemption, depreciation, tax attribute or benefit or similar program determined by reference to ownership of renewable energy production facilities, renewable electric energy produced from Solar Energy or amounts invested in renewable energy generating facilities.

"Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth.

"Term" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"Test" or "Testing" means those tests, evaluations and measurements of the Facility's output capability that are undertaken in connection with the Commissioning of the Facility pursuant to Section 10.2 of this PPA, which shall include such tests as are consistent with Prudent Industry Practices and that are required by the Financing Documents, applicable permits and the EPC Contract.

"Test Date" means the date on which Seller shall commence Commissioning of the Facility.

"Test Energy" means the Solar Energy Output that is generated by the Facility, delivered to Company at the Point of Delivery, and purchased by Company, pursuant to Section 10.2(E).

"Unit" means any of the generator units forming a part of the Facility.

"Unpermitted Company Maintenance" shall mean Company maintenance on the Interconnection Provider's System that is not scheduled at least 48 hours prior to the date of such maintenance or that occurs during a Non-Scheduled Maintenance Period other than during an Emergency Condition.

"Year" means a calendar year.



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## Article 2 - Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until the twenty (20) year anniversary of Commercial Operation Date, subject to early termination or any extension provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this PPA, repayment of principal and interest associated with security funds, and the indemnifications specified in this PPA. The Term of this PPA may be extended only upon the written agreement of Seller and Company.

## Article 3 - Facility Description

3.1 Summary Description. Seller shall construct, own or lease, operate, and maintain the Facility and associated equipment having an aggregate maximum power output of approximately 11.2 MWp (9.3 MWac), as seasonally adjusted and/or normalized.

3.2 Location. The Facility shall be located on the Site. The address of the Facility is White Oak Road, Dover, Delaware. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Electric Interconnection Point and the location of the important ancillary facilities and Interconnection Facilities, is set forth in the Facility Site Lease.

3.3 General Design of the Facility. Seller shall construct the Facility in accordance with Prudent Industry Practice(s) and in compliance with the terms and conditions of the Interconnection Agreement. During Commercial Operation, Seller shall maintain the Facility according to Prudent Industry Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the Facility shall at all times:

(A) have the required panel space to accommodate metering, generator telemetering equipment and communications equipment;

(B) have remote monitoring facilities;

(C) have suitable solar radiation meters necessary to characterize the solar resource and site ambient conditions including temperature, pressure and humidity.

3.4 Facility Capacity Adjustment Prior to Seller's notice to its EPC contractor to commence construction, Seller may, on one occasion only, increase or decrease the Facility Capacity by providing Company with written notice of such adjustment; provided, however, that Seller may not decrease the Facility Capacity to below 6.6



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MWac or increase above 10.3 MWac without Company's prior written consent. Such notice of the adjusted Facility Capacity shall also include corresponding adjustments to the Estimated Solar Output.

3.5 Transmission Facility Upgrades As part of Seller's obligation to construct the Facility, it has budgeted up to $[redacted] towards certain costs and expenses of upgrades to the Interconnection Facilities that may be reasonably necessary to interconnect Seller's Facility at the Point of Connection. If the results of any interconnection or other studies related to the Facility demonstrate that the costs and expenses of upgrades to the Interconnection Facilities reasonably necessary to interconnect Seller's Facility at the Point of Connection will be more than $[redacted] but less than or equal to $[redacted], then Company shall be responsible for the Environmental Attribute Percentage of such amount (the "Excess Amount"); provided, however, that such Excess Amount shall be amortized, on an After-Tax Basis, with interest at the Finance Rate, over a period equal to the lesser of (i) the useful life, determined in accordance with GAAP, of the capital component funded by such cost; and (ii) the remaining term of this PPA, and Company shall pay Seller such amount in equal monthly installments. If the costs and expenses of any upgrades to the Interconnection Facilities reasonably necessary to interconnect Seller's Facility at the Point of Connection will be more than $[redacted] and neither Seller nor Company and all other purchasers of Environmental Attributes from the Seller agree to pay for such costs and expenses, then either Party may terminate this PPA by delivery of written notice to the other Party.

## Article 4 - Commercial Operation

4.1 Commercial Operation.

(A) Subject to extension as specifically provided for herein, the Facility shall achieve the Commercial Operation Date no later than the Required Commercial Operation Date; provided, that Seller shall not be obligated to establish a Commercial Operation Date under this PPA that is earlier than the Required Commercial Operation Date.

(B) The Required Commercial Operation Date shall be extended, day-for-day, for (i) each day during which a Force Majeure event has occurred and is continuing; and (ii) each day after November 30, 2009 that Seller has not obtained all Project Contracts, Project Consents and Governmental Approvals.

(C) If the Commercial Operation Date is not achieved by [December 1, 2010], then the Required Commercial Operation Date shall be extended by up to six (6) months if Seller is diligently pursuing the achievement of the Commercial Operation Date.

(D) If the Commercial Operation Date is achieved with a Demonstrated Capacity less than the Facility Capacity, then Company's sole remedy shall be to collect liquidated damages from Seller in an amount equal to the Daily LD Amount per day



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during the LD Period. The Daily LD Amount shall equal $[redacted] per day, multiplied by a percentage equal to: (i) the Facility Capacity minus the Demonstrated Capacity of the Facility; divided by (ii) the Facility Capacity. At the end of the LD Period, this PPA shall continue in full force and effect for the remainder of the Term.

(E) If the Commercial Operation Date is not achieved by the Required Commercial Operation Date, then Company's sole remedies shall be: (i) to collect liquidated damages from Seller in an amount equal to $[redacted] per day during the LD Period; and (ii) if the Commercial Operation Date has not been achieved on or before the end of the LD Period, to terminate this PPA upon ten (10) Days' written notice to Seller.

4.2 Test Energy. Seller shall coordinate the production and delivery of Test Energy with Company, including providing Company with prior notice of delivery as Company may reasonably request. Company shall cooperate with Seller to facilitate Testing of the Facility. Company shall accept delivery of Test Energy, provided that the Facility is installed and interconnected in accordance with the Interconnection Agreement. Company shall purchase such Test Energy delivered to the Point of Delivery at the rates in effect for the first year after the Commercial Operations Date.

## Article 5 – Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall be responsible for all interconnection and transmission arrangements and costs required to deliver the Solar Energy Output and Test Energy from the Facility to Company at the Point of Delivery at the required voltage; provided, however, that Company shall be responsible for any charges and costs assessed by PJM in connection with the delivery of the Solar Energy Output to Company at the Point of Delivery, including any congestion charges. Seller shall bear no responsibility related to delivery past the Point of Delivery or any ancillary, control area or generator imbalance services required pursuant to Company's open-access transmission tariff or any other transmission utility, regional transmission organization, NERC, PJM, the RRO or any other entity. Seller shall diligently negotiate an Interconnection Agreement with the Interconnection Provider and post and maintain any and all security for payment and performance, if, when and for so long as required under the Interconnection Agreement.

(B) Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs, and control area or generator imbalance services required to deliver the Solar Energy Output and Test Energy beyond the Point of Delivery. Company shall receive all transmission credits associated with its contract capacity allocated by the transmission provider.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's SCC.



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5.3 Electric Metering Devices.

(A) Seller shall ensure that the Solar Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices are installed at the Electric Interconnection Point that measures the output of the Facility before such energy is commingled with the energy from any other project.

(B) The following provisions of this section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Solar Energy made available to Company by Seller under this PPA and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA. Seller shall provide or arrange with the Interconnection Provider to provide Company reasonable access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted Seller shall provide Company with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Interconnection Provider necessary to allow Company such access.

(D) Either Company or Seller may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to Company. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up Metering, provided, however, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.



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(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. The accuracy of the Electric Metering Device shall be measured in accordance with Prudent Industry Standards but in no event less than every three (3) Years. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Solar Energy Output from the Facility and to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Seller shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Company for this period from such re-computed amount. Company shall have the right to verify such recomputed invoice and provide any suggested revisions by provision of written notice within twenty (20) Days of receipt of the revised invoice. If the difference is a positive number, the difference shall be paid by Company to Seller; if the difference is a negative number, that difference shall be paid by Seller to Company, or at the discretion of Company, may take the form of an offset to payments due Seller



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by Company. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Company elects payment via an offset.

## Article 6 – Seller's Conditions Precedent

6.1. Seller's Condition Precedent Seller's obligations under this PPA are conditioned upon the occurrence of each of the following conditions (or the waiver by Seller thereof), each of which Seller shall pursue diligently with commercially reasonable efforts:

(A) Seller having obtained or being in the process of obtaining (with no reasonably foreseeable expectation of a failure to obtain) the Project Consents and any other Governmental Approvals for which it is responsible under the terms hereof, in a form reasonably satisfactory to Seller;

(B) Seller having entered into Financing Documents relative to the construction of the Facility and having achieved Financial Closing, which Seller currently contemplates will consist of a construction loan facility and a cash grant in lieu of Code section 48 investment tax credits; and

(C) Seller having entered into the Project Contracts and all conditions to effectiveness of such Project Contracts have been satisfied.

## Article 7 – Sale and Purchase of Solar Energy Output and Environmental Attributes

7.1 Sale and Purchase of Solar Energy Output and Capacity.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company the Solar Energy Output, together with all related PJM Facility Capacity, and Company shall purchase all such Solar Energy Output and related PJM Facility Capacity, all at the applicable price set forth in Section 8.1. Company shall be entitled to all capacity products and ancillary services available from the Facility associated with the PJM Facility Capacity.

(B) As between Seller and Company, Seller shall be in control of the Solar Energy Output and Test Energy from the Facility up to and until delivery and receipt at the Point of Delivery and Company shall be in control of such energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Solar Energy Output and Test Energy shall transfer from Seller to Company at the Point of Delivery.

(C) Seller shall use Prudent Industry Practices and commercially reasonable efforts to qualify and maximize the amount of PJM Facility Capacity available to Company throughout the term of this PPA or to count as part of Company's obligations to procure such capacity.



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7.2 Limited Sale of Environmental Attributes.

(A) Beginning on the Commercial Operation Date, Seller shall assign or cause to be assigned to Company, and Company shall acquire an amount of Environmental Attributes equal to the Environmental Attribute Percentage of the total Environmental Attributes at the price set forth in Section 8.1. Upon such acquisition, the Company shall have the right to register, hold and manage such transferred Environmental Attributes. Seller shall retain the right to all Environmental Attributes produced prior to the Commercial Operation Date. The Parties agree that such sale of Environmental Attributes shall be deemed to occur at the Site.

(B) Ownership by Company of Environmental Attributes as set forth in Section 7.2(A) shall be for the entire Term of this PPA, including any Environmental Attributes that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Company may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any Environmental Attributes obtained under Section 7.2(A) (but not any payment obligation) to one or more third parties under any transaction permitted by Applicable Law. Any financial or other compensation received by Company from the disposition of Environmental Attributes held by Company as set forth in Section 7.2(A) shall inure solely to the benefit of the Company.

(C) Tax Credits in effect on the date of this PPA or arising hereafter shall be accrue solely to the benefit of Seller.

(D) Seller and Company shall execute all documents and instruments necessary to effect the transfer of the Environmental Attributes Percentage of the Environmental Attributes to Company or its respective designees, including compliance with all Applicable Law, including the Delaware Renewable Energy Portfolio Standards Act (26 Del. C. § 351 et. seq.) and all rules and regulations established by any Person for the issuance and tracking of RECs, including the Delaware Public Service Commission and GATS. Without limiting the generality of the foregoing, Seller shall, on or before the Commercial Operations Date or as soon as reasonably possible thereafter, establish the Facility as an "Eligible Energy Resource" pursuant to the Delaware Renewable Energy Portfolio Standards Act (26 Del. C. § 351 et. seq.) and, if permitted by Applicable Law, as an eligible resource in Pennsylvania and Maryland and, at Company's sole cost, in such additional States as Company may reasonably request, and shall thereafter file such attestations and other documentation as necessary to document all SRECs produced by the Facility, and to transfer the Environmental Attribute Percentage of Environmental Attributes produced by the Facility to Company. Seller shall provide Company copies of all such attestations and other documentation. Seller may withdraw its registrations in States other than Delaware if it reasonably determines that such registration would require it to register as a foreign limited liability company in such States or otherwise expose it to Tax liability in such States.

(E) Company has the option, but not the obligation, to increase the Environmental Attribute Percentage effective during the period starting on the fifteen



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(15) year anniversary of the Commercial Operation Date through the end of the Term, to include all of the Environmental Attributes that Seller has sold pursuant Third-Party REC Agreements, which are defined as any agreement between the Seller and a third-party for the sale of Environmental Attributes that expire on the fifteen (15) year anniversary of the Commercial Operation Date. Company shall exercise such option by delivery to Seller of written notice during the period starting on the fourteen (14) year anniversary of the Effective Date and ending six (6) Months thereafter.

7.3 Scheduling.

(A) Scheduling shall be on a "must-take" basis, except for Forced Outages, Scheduled Maintenance Outages, Additional Maintenance Outages, Permitted Company Maintenance, Force Majeure events and Emergency Conditions to the extent that the Solar Energy Output of the Facility is reduced. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Company with a good faith estimate of the quantity of Solar Energy Output that it expects to generate for the remainder of that Year. By October 1 of each succeeding Year, Seller shall provide Company with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Year (the "Projected Schedule").

(B) Seller shall provide to Company its good faith, non-binding estimates of the daily quantity (by hour) of Solar Energy Output to be delivered by Seller to the Point of Delivery for the following three (3) Month period by 4:00 p.m. EPT on the date falling at least three (3) Days prior to the beginning of that Month.

(C) If, at any time following submission of a good faith estimate as described in Section 7.3(B), Seller becomes aware of any change that alters the values previously provided to Company, Seller shall promptly notify Company of such change or predicted change.

(D) Company shall act as the scheduling agent for the Facility and schedule the Solar Energy Output and Facility capacity into the PJM market or as otherwise determined by Company in accordance with Applicable Law. Any charges, penalties, costs, fees or other amounts associated with such scheduling shall be for the account of Company.

7.4 Forced Outages. Seller shall notify Company and SCC by telephone call (with confirmation in each case to follow by written notice or other form of documentation as agreed upon by both Parties) immediately upon discovering that the Facility is unable to deliver all or part of any scheduled quantity of Solar Energy Output due to a Forced Outage and, as soon as reasonably practicable following such discovery, shall notify Company and SCC in writing of its best estimate of the expected duration of such Forced Outage. Such estimate by Seller shall be based on the best information available to it. Should Seller expect any further changes in the duration of any such Forced Outage, it shall promptly notify Company and SCC of the same.



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7.5 Non-Discrimination.. No purchaser of Environmental Attributes from the Facility, including Company, shall have a priority right over other parties also purchasing Environmental Attributes from the Seller. If the Facility's capacity is reduced, the amount of Environmental Attributes purchased collectively by Company and all other purchasers of Environmental Attributes from Seller shall be reduced on a pro-rata basis.

## Article 8 - Payment Calculations

8.1 Energy, Environmental Attribute and O&M Payments.

(A) Except as otherwise provided in this PPA, Company shall pay Seller a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1 equal to the following:

(i) the "Solar Energy Payment" equal to the sum, over all hours of the Monthly Billing Period, of the product of (i) the Solar Energy Payment Rate; and (ii) the amount of Solar Energy Output (MWh) delivered to the Point of Delivery from the Facility during that hour and all Curtailed Energy;

(ii) the "Environmental Attribute Payment" equal to the sum, over all hours of the Monthly Billing Period, of the product of (i) the rate in $/MWh set forth in Schedule I for "Environmental Attribute Payment Rate"; (ii) the amount of Solar Energy Output (MWh) derived from the Facility during that hour and all Curtailed Energy; and (iii) the Environmental Attribute Percentage;

(iii) the "Operations and Maintenance Payment" equal to the product of: (i) the Environmental Attribute Percentage; and (ii) the actual O&M Costs. On or before the Commercial Operations Date, Seller shall provide Company with its estimated O&M Costs for the remainder of that Year and on or before October 1st of each Year thereafter, Seller shall provide Company with its estimated O&M Costs for the following Year, in each case broken down by Month and prepared in accordance with Prudent Industry Practices. The monthly Operations and Maintenance Payment shall be based on such estimated O&M Costs. Seller shall provide Company with a semi-annual report on actual O&M Costs, and any adjustments to the monthly Operations and Maintenance Payment based on such actual O&M Costs shall be made within ten (10) days of such semi-annual report. Company shall have the right to inspect the records that Seller relies upon to determine actual O&M Costs during normal business hours upon reasonable advance notice; and

(iv) the "Capitalized Operations and Maintenance Payment" equal to equal monthly installments based on the amount of the Capitalized O&M Cost, determined with interest at the Finance Rate, and amortized on an After-Tax Basis, over a period equal to the lesser of (i) the useful life,



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determined in accordance with GAAP, of the capital component funded by such cost; and (ii) the remaining term of this PPA.

(B) Test Energy Payment. Except as otherwise provided in this PPA, Company shall pay Seller for Test Energy generated prior to the Commercial Operation Date by making a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1, equal to the product of: (a) the rate in $/MWh set forth in Schedule I for "Energy Price" during the first Year after the Commercial Operation Date; and (b) the amount of Test Energy (MWh) delivered during that Month; and

8.2 Curtailed Energy Payment.

(A) If (i) Seller cannot deliver Solar Energy Output because of a Company Delivery Excuse; or (ii) delivery of Solar Energy Output is curtailed by Company other than as a result of an Emergency Condition, then Seller may offer such Solar Energy Output ("Curtailed Energy") and all Environmental Attributes that would have been produced by the Facility had its generation not been so curtailed ("Curtailed Environmental Attributes") to third-parties as may be interested and able to purchase such Solar Energy Output.

(B) The Parties shall determine the quantity of Curtailed Energy and Curtailed Environmental Attributes by taking into account the following: (1) during such periods, the actual levels of solar irradiation and ambient conditions as measured at the Site, or if such data is not available, using other available data determined using Prudent Industry Practices, (2) the incremental energy that would have been produced based on ambient conditions at the Site, and (3) the actual availability of the Facility.

8.3 Most Favored Customer Pricing. If prior to the Commercial Operations Date or during the eighteen (18) month period after the Commercial Operation Date, Seller enters into an agreement with a third party for the sale of Environmental Attributes from the Facility for the same term with material economic and non-economic terms that are more favorable to such third-party purchaser as compared to the terms set forth herein, Seller shall offer to amend this PPA so that such material economic and non-economic terms provided to Company are no less favorable than those set forth in the agreement between Seller and such third-party purchaser.

8.4 Payment Support Requirement. Neither Party shall initiate any action before any Governmental Authority to deny recovery of payments under this PPA, and each Party shall use its best efforts to defend all terms and conditions of this PPA consistent with Applicable Law.

8.5 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.



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8.6 Solar Energy Payment Rate Adjustment.. The Solar Energy Payment Rate as set forth on Schedule I shall be adjusted in each Year following the first "Planning Period" (as defined in the PJM Amended and Restated Operating Agreement, as may be amended and/or restate from time to time) after the Commercial Operation Date by adding (a) the Solar Energy Payment Rate; and (b) the product of: (x) the Solar Energy Payment Rate for such Year as set forth on Schedule I; multiplied by (y) the Adjustment Factor.

## Article 9 - Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Points of Delivery at 11:59 p.m. EPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) On or before the tenth Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the Solar Energy Payment, the Environmental Attribute Payment, the Operations and Maintenance Payment and the Capitalized Operations and Maintenance Payment, payable by Company pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show information and calculations, in reasonable detail. Company shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

(C) Beginning with the first Month following the Month in which the first Unit has been Commissioned until an invoice is required to be prepared pursuant to clause (B) above, Seller shall prepare an invoice showing the charges for Test Energy, RECs and Renewable Attributes payable to Seller for the preceding Month. Company shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

(D) Company shall, subject to Sections 9.5 and 9.8, pay all invoices on or before the due date therein specified. If Company should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If banks in the state of Delaware are permitted or authorized to close on any date on which any payment by Company would otherwise have been due, then Company shall make such payment on the Business Day that immediately follows such payment date.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Company under this PPA, other than those specified in Sections 9.1 above, shall be paid within twenty (20) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment. If either Party is billed or credited for any charges, costs, fees, penalties, credits or other amounts properly payable by the other Party pursuant to the terms of



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this Agreement, the Party receiving such invoice shall deliver such invoice to the other Party and such other Party shall pay such invoice by the later of the due date or twenty (20) days after receipt from the receiving Party.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Company under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide Dispute (in which case it shall be treated under Section 9.5 below), if any payment due from Company to Seller or from Seller to Company under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at the prime rate as published in the Wall Street Journal plus two percent (2%) (the "Default Rate"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party (the "Disputing Party") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a Dispute in good faith, the Disputing Party shall give written notice to the other Party within ten (10) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such Dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a Dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a Dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive).

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement within one (1) year of the date of a statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of such error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid. No adjustment to a billing statement shall be made if notice of



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an error in such statement is not provided within one (1) year of the date of such statement.

9.7 Taxes.

(A) All Solar Energy Output delivered by Seller to Company hereunder is on a wholesale basis. Company may use the Solar Energy Output for its own consumption or resell it to third part(ies). Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller, to evidence that the deliveries of Solar Energy Output hereunder are sales for resale.

(B) Seller shall not be obligated to pay or reimburse Company for Taxes imposed on or measured by the Company's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes.

(D) The Parties shall provide each other, upon written request, with copies of any documentation that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any material financial burden to reduce Taxes for which the other Party is responsible hereunder.

(F) Company shall be responsible for the payment of, and no amount payable by Seller to Company shall be subject to adjustment for, Taxes imposed on Company and its property. In addition, Company shall be responsible for the payment of any Change in Applicable Law related to Taxes imposed on Seller as set forth below. If a Change in Applicable Law related to Taxes imposes a new or greater burden on Seller for payment of Taxes, Company shall be responsible for the Environmental Attribute Percentage of such increased Taxes, and shall pay the amount of such Taxes related to a Change in Applicable Law directly to the taxing authority, reimburse Seller for such amounts within ten (10) Days after Seller pays such amount or, at Seller's option, or reimburse Seller for such amounts in accordance with Section 9.2.

(G) Seller shall determine for any Billing Period any increase or decrease to any payment under Section 9.1 resulting from the application of a Change in Applicable Law related to Taxes for such Billing Period, and shall provide to Company a certificate setting forth in reasonable detail the basis and calculation of such increase or decrease to the Solar Energy Payment Rate or Environmental Attribute Payment Rate, as applicable. Within 20 Business Days after its receipt of such certificate, Company shall notify Seller whether it approves or disapproves of Seller's adjustments. If Company fails to respond within such 20 Business Day period, it shall be deemed to have approved of such adjustment. If Company approves of such adjustments within such 20 Business Day period or the adjustments shall be determined to be due Seller



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by dispute resolution, the adjustments shall become effective and this PPA shall be deemed to be amended to reflect such adjustments.

9.8 Set-Off and Payment Adjustments. All payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of set-off or otherwise. Payments to be made under this PPA shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties or resolved in accordance with the provisions of Section 13.4 hereof.

9.9 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## Article 10 - Operations and Maintenance

10.1 Construction of the Facility.

(A) Starting on the date that falls one Month after the date upon which a notice to proceed under the EPC Contract is given in accordance with the terms of the EPC Contract and, thereafter, at Monthly intervals, Seller shall report to Company on the construction of the Facility during the previous Month and shall provide progress reports and an updated completion schedule for the Facility. Such Monthly reports shall provide a schedule showing items completed and to be completed and a best estimate time-frame within which Seller expects its EPC contractor to complete such non-completed work. None of the foregoing shall be deemed to be in lieu of, or in substitution for, the general record and reporting obligations attendant to Seller in accordance with Article 13 hereof.

(B) Other than the rights and obligations of Company specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Company, and Company specifically disclaims, any right, title or interest in any part of the Facility.

10.2 Commissioning Tests.

(A) Seller shall coordinate testing plans with Company by providing a Testing plan at least thirty (30) days prior to the first anticipated Test Date, updates to such Testing plan on a weekly basis, and at least forty-eight (48) hours prior notice of the actual Test Date and of the proposed Tests scheduled relating to the Commissioning of the Facility ("Commissioning Tests"). Representatives of Company shall have the right to be present at all such Testing. Seller shall promptly notify Company of any changes to the Test Date or the date of any Commissioning Tests relating to the Facility in order that Company may arrange for its respective representatives to attend.



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(B) The results of Commissioning Tests shall determine the Facility's Demonstrated Capacity. Seller may conduct multiple Commissioning Tests to determine the highest Demonstrated Capacity.

(C) Test Energy shall be delivered by Seller for Company at the Point of Delivery, and Company shall purchase such Solar Energy Output as set forth in Section 8.1(B).

10.3 Maintenance of the Facility. Seller shall maintain all Facility equipment or cause the same to be maintained at all times in accordance with manufacturers' recommendations and Prudent Industry Practices and otherwise in accordance with this PPA or Interconnection Agreement. Seller and Company shall create an operating committee with one representative from each Party. Such operating committee shall meet on an annual basis and, if requested by a member of the operating committee, one additional meeting per calendar quarter. The operating committee shall discuss Seller's O&M Costs and maintenance plan for the following Year and other matters that are germane to the effective planning and execution of Solar Facility's operations and maintenance. Company may make suggestions on the maintenance plan for the Facility; provided, however, that Seller shall not be obligated to follow such Company recommendations.

10.4 Scheduled Maintenance.

(A) Three (3) Months prior to the Commercial Operation Date and, thereafter, by October 1 of each Year, Seller shall deliver to Company and SCC the Projected Schedule for the Facility for the subsequent annual period, including Scheduled Maintenance Outages. Seller shall take manufacturers' recommendations and Prudent Industry Practices into account when establishing the proposed schedule for Scheduled Maintenance Outages, which schedule shall correspond with the Projected Schedule. Scheduled Maintenance Outages and/or Additional Maintenance Outages may not be scheduled during the Months of June, July, August, or September (the "Non-Scheduled Maintenance Period") unless agreed to in writing by Company, or unless such Scheduled Maintenance Outages and/or Additional Maintenance Outages can be performed at night and do not affect the Facility's operations during the day.

(B) Within thirty (30) Days of receiving the proposed schedule for Scheduled Maintenance Outages from Seller, Company may propose amendments thereto. Seller shall not unreasonably withhold its consent to such proposed amendments, provided that, it shall not be unreasonable for Seller to withhold its consent to any such proposed amendments that would be contrary to Prudent Industry Practices.

(C) Seller shall be entitled to change any Scheduled Maintenance Outages for the then current Year upon fourteen (14) Days notice to the Company and SCC, or if such changes are required to comply with Prudent Industry Practices or, in the alternative, if Company consents to the change, provided that any changes shall not be scheduled during the Non-Scheduled Maintenance Period. Seller shall not



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unreasonably refuse to change the schedule of Scheduled Maintenance Outages if requested to do so by Company upon not less than fourteen (14) Days' prior notice, provided that any such change would not be contrary to Prudent Industry Practices or cause Seller to incur any material costs.

(D) Any maintenance outages that do not correspond to the descriptions contained in clauses (A)-(C) of this Section 10.4 shall be deemed to be Additional Maintenance Outages under Section 10.5.

10.5 Additional Maintenance Outages. As the need arises for Seller to conduct further maintenance on the Facility during which the Facility is shut down or its output reduced in addition to that conducted pursuant to Section 10.4 hereof ("Additional Maintenance Outages"), Seller shall notify Company of such required maintenance, together with proposed dates for carrying out such additional maintenance and the estimated duration of the work to be carried out. Unless deferral of such maintenance would cause an Emergency Condition, Seller shall prepare a schedule of such Additional Maintenance Outages based on Prudent Industry Practices taking into account the reasonable requests of Company to the extent reasonably possible. Seller shall use Prudent Industry Practices to avoid Additional Maintenance Outages during the Non-Scheduled Maintenance Period. Notwithstanding the foregoing, Additional Maintenance Outages that consist of washing PV panels to improve production of the Facility may be performed by Seller upon written notice to Company.

10.6 Access to and Inspection of Facility.

(A) Seller shall provide Company and its authorized agents, employees and inspectors with reasonable access to the Facility for the purposes set forth herein. Company acknowledges that such access does not provide Company with the right to direct or modify the operation of the Facility in any way and further acknowledges that any exercise by Company of its rights under this Section 10.6 shall be at its own risk and expense. Company shall abide by Seller's safety procedures and rules while visiting the Site.

(B) No inspections of the Facility, whether by Company or otherwise, shall relieve Seller of its obligation to maintain the Facility and operate the same in accordance with Prudent Industry Practices. In no event shall any statement, representation, or lack thereof by Company, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any inspection of Seller's property or equipment by Company or any review by Company or consent by Company to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.

## Article 11 - Security

11.1 Security

(A) Company shall provide notice to Seller of any Credit Event within two (2) Business Days of the occurrence of a Credit Event. Company shall provide



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Seller with copies of all material correspondence issued by its rating agencies, including copies of all information related to Company's credit rating and any actual or proposed adjustment thereto.

(B) During the Credit Event Period, Company shall provide Seller, at Seller's option, with either: (i) one or more Letter(s) of Credit (as defined in Section 11.1(C)), in a form acceptable to Seller, with the costs associated with any such Letter(s) of Credit to be borne by Company, or (ii) cash deposits, in each case in the amounts specified in this Section 11.1(D), to be held in collateral accounts controlled by Seller in a form reasonably satisfactory to Seller with the costs associated with the collateral accounts to be borne by Company. In the event that any such right to security is invoked by Seller in accordance with the terms of this section, then Company shall have the obligation to replenish such security within thirty (30) Days of Company's invocation of such rights in accordance with the requirements of this Section 11.1.

(C) As used herein, a "Letter of Credit" shall mean an unconditional, irrevocable, direct pay standby letter(s) of credit issued by a U.S. commercial bank or the licensed U.S. branch of a foreign commercial bank (the "Issuer"), provided that any such Issuer shall have a combined capital and surplus of at least $500,000,000 and a Senior Debt Rating, equivalent to A- or better as determined by S&P or A3 or better as determined by Moody's.

(D) For the period beginning with the date described in Section 11.1 when Company must provide security to Seller, and continuing until termination of this PPA and/or the expiration thereof, any Letter(s) of Credit or cash deposit(s) being provided by Company to Seller hereunder shall be in the amount equal to six (6), multiplied by the average monthly amount of all invoices for the Solar Energy Payment, the Environmental Attribute Payment, the Operations and Maintenance Payment and the Capitalized Operations and Maintenance Payment over the past twelve (12) months.

(E) Company shall have the right and Seller shall be required to monitor the financial condition of the Issuer(s) in the event any Letter of Credit is provided by Company. In the event the Senior Debt Rating or the asset value of any Issuer(s) has deteriorated to a level below the minimum level(s) stated in clause (B) of this Section 11.1, Seller may require Company to replace the Letter(s) of Credit. Replacement Letter(s) of Credit must meet the requirements listed in clause (B) of this Section 11.1 and be provided to Seller within forty-five (45) Days following written notification to Company of the requirement to replace.

(F) Failure by Company to comply with the requirements of this Section 11.1, absent payment to the Seller in the amount of the existing Letter of Credit or a cure by Company in accordance with Section 12.1(B) hereof, shall be sufficient grounds for Seller to draw in full on the existing Letter of Credit and shall constitute an Event of Default pursuant to Section 12.1.



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11.2 Effect of Security. Nothing in this Article 11, any security agreement or any such Letter of Credit is intended, or shall be deemed or construed to, in any way limit or modify any obligation or agreement of or recourse to Company hereunder.

## Article 12 - Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(i) Seller's dissolution or liquidation;

(ii) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise; and

(iii) The sale of Solar Energy Output by Seller to a third party, or diversion by Seller for any use of Solar Energy Output committed to Company by Seller other than in mitigation of damages for any breach by Company of this PPA or during any period during which Company does not take delivery of Solar Energy Output as described herein.

(B) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Company to Seller and the Financing Parties:

(i) Seller's abandonment of operation of the Facility, which means the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this PPA, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by Company, or an event of Force Majeure or Company Delivery Excuse;

(ii) Seller's failure to make any payment due to Company under or in connection with this PPA;

(iii) Seller's assignment of this PPA except as permitted in accordance with Article 19;

(iv) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made and such misrepresentation or breach of warranty would reasonably be expected to result in a material adverse impact on Company;

(v) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could



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materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period; or

(vi) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Company

(C) It shall not be an Event of Default of Seller hereunder if Seller does not produce a specified amount of Solar Energy Output, RECs or Environmental Attributes; provided, however, that, Seller's failure to deliver at least seventy-five percent (75%) of the Adjusted Estimated Solar Energy from the Facility in any continuous twenty-four month period ("Period") beginning on or after the first anniversary of the Commercial Operations Date, shall constitute an Event of Default of Seller upon its occurrence, provided that this Event of Default shall be curable and deemed cured if (i) within thirty (30) Days following the end of the Period, Seller commences a plan to address such shortfall in production within 30 days and then diligently pursues such activity to completion as soon as practicable thereafter, but in no event later than eighteen (18) months after the end of the Period, and (ii) as a result of such efforts, during the twenty-four month period subsequent to the completion of Seller's efforts to address the production shortfall, Seller delivers at least seventy-five percent (75%) of the Adjusted Estimated Solar Energy during such twenty-four month period. Seller shall keep Company apprised at least monthly of Seller's cure efforts under this Section 11.1(C).

(D) Seller shall not be liable for or deemed in breach of this Agreement to the extent the performance of its obligations under this PPA is delayed or prevented by a Company Delivery Excuse.

12.2 Events of Default of Company.

(A) Any of the following shall constitute an Event of Default of Company upon its occurrence, and no cure period shall be applicable:

(i) Company's dissolution or liquidation provided that division of Company into multiple entities shall not constitute dissolution or liquidation;

(ii) Company's assignment of this PPA or any of its rights hereunder for the benefit of creditors;

(iii) Company's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Company voluntarily taking advantage of any such law by answer or otherwise.

(iv) Company's failure to establish and maintain the funding of the Security in accordance with Article 11;



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(B) Company's failure to make any payment due hereunder (subject to Company's rights with respect to disputed payments under Article 9) that is not cured within ten (10) Days of the date on which such payment is due shall constitute an Event of Default.

(C) Any of the following shall constitute an Event of Default of Company upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Seller to Company:

(i) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Company; provided, however, that Company does not obtain a stay or dismissal of the filing within the cure period;

(ii) Company's assignment of this PPA, except as permitted in accordance with Article 19;

(iii) Any representation or warranty made by Company in this PPA shall prove to have been false or misleading in any material respect when made and such misrepresentation or breach of warranty is reasonably be expected to result in a material adverse impact on Seller; or

(iv) Company's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller.

12.3 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.6, the non-defaulting Party shall have the right to suspend its performance of this Agreement and collect damages accruing prior to the termination of this PPA from the defaulting Party, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute an element of any respective cure. If the Company has committed an Event of Default, then Seller may suspend its performance hereunder, sell the Solar Energy Output and Environmental Attribute Percentage of the Environmental Attributes to a third-party in an effort to mitigate the damages payable by Company.

12.4 Termination. Upon the occurrence of an Event of Default that is not cured within the applicable cure period, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this PPA shall terminate. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the limitation on damages set forth in Section 12.6, all of the damages incurred by the non-defaulting Party in connection with such termination.



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12.5 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more or the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.6 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only, which shall include cover damages and the related costs to procure alternative arrangements. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, that if either Party is held liable to a third party for such damages, and the Party held liable for such damages is entitled to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages, all in accordance with the indemnification provisions of Article 17 hereof. To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.7 Payment of Amounts Due to Seller. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Seller may send Company an invoice for such damages or other amounts as are due to Seller at such time from Company under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. Seller may withdraw funds from the security described in Article 11 as needed to provide payment for such invoice if the invoice is not paid by Company on or before the tenth ($10^{th}$) Business Day following the invoice due date.

12.8 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA

12.9 Non-Recourse. Company acknowledges and agrees that no owner, member, investor, lender, lessor, officer, director, employee or agent of Seller shall have any obligation to Company arising under this PPA, and that Company shall seek recourse solely against Seller and its assets in the event of any breach of this PPA by Seller.

## Article 13 – Contract Administration and Notices



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13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit A as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

13.2 Records. Seller and Company shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Company pertaining to the operation of the Facility and/or this PPA as specified herein or otherwise shall be maintained at the Facility or in an office of Seller or Company, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right, upon reasonable prior written notice to the other Party and at its own expense, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Facility equipment manuals and O&M Records).

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of solar irradiation and energy production (by individual power block or Unit) for each clock hour; changes in operating status; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and pursuant to any Non-Governmental Compliance Obligations; Forced Outages, agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including supply contracts, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility (collectively, the "O&M Records").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Company shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of the Facility shall be maintained at the Site or in an office of Seller.

13.3 Provision of Real Time Data. Upon request from Company, Seller shall provide real-time electronic access to Company of all solar irradiance and



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meteorological data collected at the Facility and corresponding unit availability data as well.

13.4 Dispute Resolution. With respect to any disputes arising out of or related to this PPA, the Parties consent to the exclusive jurisdiction of, and venue in, the state or federal courts located in Wilmington, Delaware.

## Article 14 - Force Majeure and Company Delivery Excuse

14.1 Definition of Force Majeure Event.

(A) "Force Majeure" shall mean a cause or event that actually and proximately prevents either Party, in whole or in part, from performing any of its obligations under this PPA including, acts of God; unusually severe actions of the elements such as floods, inundation, landslides, earthquake, lightning, hurricanes, or tornadoes; unusually severe weather; terrorism; war (whether or not declared); sabotage, acts or threats of terrorism, riots or public disorders; delays in obtaining necessary permits and regulatory approvals; strikes or labor disputes not expressly excluded below; actions or failures to act of an unaffiliated third party supplier of goods or services (to the extent caused by an event which would meet the definition of Force Majeure); and actions or failures to act of any Governmental Authority (including the failure to issue permits, blockade, embargo, military or governmentally usurped power, expropriation or requisition) to the extent preventing or delaying the performance of the Party claiming Force Majeure; or any other event beyond the reasonable control of the Party claiming Force Majeure, whether or not foreseeable, but only to the extent the Party claiming Force Majeure is unable to prevent, avoid or overcome such event through the exercise of commercially reasonable efforts, and such event is not the result of the fault or negligence of the Party claiming Force Majeure.

(B) "Force Majeure" shall not include: (i) any failure of, or delay in performance, or any full or partial curtailment in the electric output of the Facility that is caused by a labor dispute or strike by Seller's employees or any employees of Seller's contractors employed at the Facility (except to the extent arising out of a strike or labor action not directed specifically at the Seller or the Facility, including without limitation, a national or regional strike), (ii) market changes in, or that otherwise effect, the price of energy, capacity or Environmental Attributes, or (iii) any Change in Applicable Law that effects the value or existence of Environmental Attributes.

14.2 Effect of Force Majeure.

(A) In no event will any delay or failure of performance caused by Force Majeure extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by Force Majeure affecting Seller continues for an uninterrupted period of twenty four (24) months from its inception, the Party not claiming Force Majeure may, at any time following the end of such period if the Force Majeure event is still in effect, terminate this PPA upon written notice to the affected Party, without further



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obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(B) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure event but only and to the extent thereof, and only if: (i) the non-performing Party gives the other Party notice describing the occurrence of the Force Majeure event as described in Section 14.3; (ii) the non-performance is of no greater scope and of no longer term than is required by the Force Majeure event; and (iii) the non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

(C) The existence of a condition of Force Majeure event shall not relieve the Parties of obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition or Force Majeure event.

14.3 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure event, the Party claiming that a Force Majeure event has occurred shall notify the other Party immediately by telephone and/or email, and in writing, within five (5) Days of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure event requires. A Party claiming that a Force Majeure event has occurred shall not be entitled to any relief therefor unless and until conforming notice is provided. The Party claiming that a Force Majeure event has occurred shall notify the other Party of the cessation of the Force Majeure event or of the conclusion of the affected Party's cure for the Force Majeure event, in either case within two (2) Business Days thereof.

14.4 Duty to Mitigate. The Party claiming that a Force Majeure event has occurred shall use its best efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure event and perform its obligations pursuant to Section 14.5 below; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.5 Force Majeure Restoration.

(A) In the event that, as a result of one or more Force Majeure event(s) or its or their effects or by any combination thereof, the construction or operation of the Facility or any part thereof is affected and is not restored or remedied within thirty (30) Days following the date the Force Majeure event(s) began, then Seller shall prepare



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and deliver to Company a Restoration Report pursuant to Section 14.7 and provisions (C)-(E) of this Section 14.5 shall apply.

(B) Subject to the terms of the Financing Documents and clauses (C) and (D) below, Seller shall proceed with the remedying of the construction or operation of the Facility ("Restoration") in accordance with a schedule contained in the relevant Restoration Report, as defined in Section 14.7 hereof (the "Restoration Schedule"). The cost of such Restoration shall be the sole responsibility of Seller and no compensation shall be payable by Company to Seller with respect to any damage to the Facility as a result of the Force Majeure event.

(C) If the cost of Restoration of the Facility, net of insurance proceeds, is greater than five percent (5%) of the original cost of the Facility, then Seller shall have the right to terminate this PPA.

14.6 Restoration Consents. Notwithstanding anything herein to the contrary, Seller shall not be required to proceed with any Restoration unless and until it shall have received all necessary third-party consents and any Governmental Approvals required therewith. If Seller does not receive any such third-party consents or any Governmental Approvals required therewith for any reason (other than an act, omission or default of Seller) within six (6) Months after the date that it becomes obligated to proceed with such Restoration, then either Seller or Company shall have the right to terminate this PPA.

14.7 Preparation of Restoration Report. When required by Section 14.5, Seller shall commence the preparation of an appraisal report (the "Restoration Report") within thirty (30) Days after the date it was required to provide a notice under Section 14.3 and shall deliver a copy of such Restoration Report to Company within sixty (60) Days after provision of such notice was required. Company shall provide Seller such information as it reasonably requires to prepare such Restoration Report. The Restoration Report shall be accompanied by reasonable supporting data and certificates and reports of financial and technical advisers of Seller, as appropriate or as reasonably requested by Company, in support of the Force Majeure event in question, and shall include (A) a description of such Force Majeure event and its impact on the Facility, (B) an estimate in good faith of the time required to restore the Facility (insofar as practicable) to its condition immediately prior to the occurrence of the Force Majeure event and (C) a proposed Restoration Schedule.

14.8 Discussion of Restoration Report. Within fifteen (15) Days of the delivery of a Restoration Report to Company or such further time as the Parties may agree, the Parties shall meet to discuss the Restoration Report and any action to be taken.

## Article 15 – Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:



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(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Company upon execution of this PPA);

(ii) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(iii) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller, enforceable against the Seller by the Company, subject to customary exceptions for public policy and bankruptcy.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in writing by Seller to



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Company, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from the Interconnection Provider and, to the extent necessary, Seller shall provide written notice to the Interconnection Provider confirming such authorization.

15.2 Company's Representations, Warranties and Covenants. Company hereby represents and warrants as follows:

(A) Company is a municipal corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Company. Company has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Company have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any further consent or approval, including from Company's City Council;

(ii) violate any Applicable Law, or violate any provision in any corporate documents of Company, the violation of which could have a material adverse effect on the ability of Company to perform its obligations under this PPA;

(iii) result in a breach or constitute a default under Company's corporate charter or bylaws, or under any agreement relating to the management or affairs of Company, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Company is a party or by which Company or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Company to perform its obligations under this PPA; or

(iv) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Company now owned or hereafter acquired, the creation or imposition of which could



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reasonably be expected to have a material adverse effect on the ability of Company to perform its obligations under this PPA.

(C) The obligations of Company under this PPA are valid and binding obligations of Company, enforceable against the Company by the Seller, subject to customary exceptions for public policy and bankruptcy.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Company is a party or any judgment, order, statute, or regulation that is applicable to Company.

(E) To the best knowledge of Company, all required Governmental Approvals necessary for Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

## Article 16 - Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Facility, and thereafter, on or before June 1 of each year of the Term, provide Company with one (1) copy of insurance certificates reasonably acceptable to Company evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit B and this Article 16. Such certificates shall (a) provide that Company shall receive thirty (30) days prior written notice of non-renewal, cancellation of, or significant modification to any of the above policies (except that such notice shall be ten (10) days for non-payment of premiums); (b) provide a waiver of any rights of subrogation against Company and its Affiliates and their respective officers, directors, agents, subcontractors, and employees; and (c) contain such other endorsements and terms as required hereunder. All policies shall be written with insurers that Company, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Company). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the term of this PPA. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Effective Date.

(B) Upon a showing satisfactory to Company in its reasonable discretion that Seller or its Affiliate(s) has sufficient net worth to self insure Seller hereunder, either directly or through an Affiliate, Seller may self insure either all or any portion of the foregoing coverages so long as there is no material decrease in said net worth, or means, that renders the same insufficient for purposes of self insurance. If at any time during the Term Company, in its reasonable discretion, determines that it will



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no longer accept self insurance from Seller, Company shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit B within sixty (60) days.

16.3 Endorsements and Other Requirements.

(A) Insurers shall waive all rights of subrogation against Company and its Affiliates and their respective officers, directors, agents, subcontractors and employees.

(B) The insurance required under this PPA shall be primary insurance. Any other insurance carried by Company shall be excess and not contributory with respect to the insurance required hereunder.

(C) The liability insurance required pursuant Exhibit B shall be endorsed to include Company, its Affiliates and their respective officers, directors, and employees as additional insureds only to the extent Company (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit B shall state, that with respect to coverage of more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

## Article 17 - Indemnity

17.1 Indemnification.

(A) Each of Company and Seller shall be responsible for its own facilities. Company and Seller shall each be responsible for ensuring adequate safeguards for Company, Company's customers and personnel and equipment belonging to Company, and for the protection of their own generating systems.

(B) Each Party (the "Indemnifying Party") agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend and hold harmless the other Party (the "Indemnified Party"), its Affiliates, their respective officers, directors, employees, agents and contractors (hereinafter called respectively, "Company Entities" and "Seller Entities") from and against any and all claims, demands, costs or expenses for loss, damages, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

(i) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;

(ii) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;



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(iii) any defect in, failure of, or fault related to, the Indemnifying Party's generation system; or

(iv) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees.

17.2 Indemnification for Fines and Penalties. Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of the other Party) for non-compliance with any municipal, state or federal laws shall be the sole responsibility of the non-complying Party.

17.3 Notice of Proceedings. Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 17.1. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification. The delay or failure of such Indemnified Party to provide the notice required pursuant to this Section 17.3 to the other Party shall not release the other Party from any indemnification obligation it may have to such Indemnified Party except (i) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the loss, and (ii) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defense of the claim, suit, action or proceeding during such period of failure or delay.

17.4 Defense of Claims.

(A) The Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior approval of the Indemnified Party, which shall not be unreasonably withheld.

(B) Unless and until the Indemnifying Party assumes control of the defense of a claim, suit, action or proceeding in accordance with clause (A) above, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(C) Neither the Indemnifying Party nor the Indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior consent of the other; provided, however, that after agreeing in writing to indemnify the Indemnified Party, the Indemnifying Party may, subject to clause (D) below, settle or compromise any claim without the approval of such Indemnified Party. If a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified without the prior consent of the Indemnifying



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Party, the Indemnifying Party shall be excused from any indemnification obligation in respect of such settlement or compromise.

(D) Following the acknowledgement of the indemnification and the assumption of the defense by the Indemnifying Party pursuant to clause (A) above, the Indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless: (i) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or(ii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party.

17.5 Subrogation.

Upon payment of any indemnification pursuant to Section 17.1 above, the Indemnifying Party, without any further action, but subject to such limits as may be imposed below, shall be subrogated to any and all Claims that the Indemnified Party may have relating thereto, and the Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such Claims.

## Article 18 - Legal and Regulatory Compliance

18.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments. Seller shall promptly notify Company of any investigations, notices or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential or possible violation of Applicable Law.

18.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and shall timely and properly pay its respective charges and fees in connection therewith.

18.3 Compliance with Reliability Standards. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, FERC, the RRO or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse Company for its share of monetary penalties.



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18.4 Change in Applicable Law.

(A) Company shall be responsible for the Environmental Attribute Percentage of any increase in the capital or variable costs of the development, design, construction, testing, commissioning, operation or maintenance of the Facility as a result of a Change in Applicable Law. Such increase in costs or variable costs as related to a Change in Applicable Law related to Taxes shall be Company's responsibility as described in Section 9.7. Change in Applicable Law costs not related to Taxes not required to be capitalized pursuant to GAAP shall be treated as an O&M Cost. Company's obligation to pay for the Environmental Attribute Percentage of Change in Applicable Law costs not related to Taxes required to be capitalized by the reasonable application of GAAP shall be amortized and paid by Company to Seller, on an After-Tax Basis, determined with interest at the Finance Rate, over a period equal to the lesser of (i) the useful life, determined in accordance with GAAP, of the capital component funded by such cost; and (ii) the remaining term of this PPA, applied in equal monthly installments.

(B) Seller shall submit to Company a certificate setting forth the basis of, and the calculation for, such increase or decrease. Within ten (10) Business Days after its receipt of such certificate, Company shall notify Seller whether it approves or disapproves of Seller's adjustments. If Company fails to respond within such ten (10) Business Day period, it shall be deemed to have approved of such adjustment. If Company approves of such adjustments within such ten (10) Business Day period or the adjustments shall be determined to be due Seller by dispute resolution, the adjustments shall become effective and this PPA shall be deemed to be amended to reflect such adjustments.

(C) No Change in Applicable Law that eliminates, reduces or otherwise modifies any obligations of Company to obtain RECs or Environmental Attributes to comply with Applicable Law, or replaces the Delaware renewable portfolio standard with a federal renewable portfolio standard, shall, in any such case, modify the obligations of the Parties hereunder.

(D) Seller shall provide Company with written notice, as soon as reasonably practicable, but in no event less than sixty (60) Business Days prior to the date on which the Change in Applicable Law imposed on Seller would become applicable, of the expected application of such event. Company shall have the right to cause Seller to exercise any right to contest that Seller may have, in the name of either or both Parties, as required, the imposition of any Change in Applicable Law, and Company shall make any payments to Seller in respect of such Change in Applicable Law when required under this Agreement, but subject to refund in the event that Company prevails in such contest; provided that Company shall notify Seller in writing of Company's request for such contest; and provided, further, that Company shall be responsible for any costs and expenses (including the costs and expenses of Seller) of such contest and shall hold the Seller harmless for any increased costs in the Change in Applicable Law resulting from such contest.



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## Article 19 - Assignment and Other Transfer Restrictions

19.1 No Assignment Without Consent. Except as permitted in this Article 19, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party; provided, (i) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder; (iii) no assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, except as otherwise provided in Section 19.1(B) below; (iv) no assignment shall impair any security given by Company hereunder; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

19.2 Permitted Transfers. Notwithstanding Section 19.1, Seller may: (i) assign this PPA without the consent of Company to any Affiliate of Company; and (ii) assign, pledge, hypothecate or otherwise transfer, as and for, among other purposes, collateral security, in connection with any financing or the refinancing of the Facility, including a sale of this PPA, together with a sale of the Facility, combined with the lease back to Seller of the PPA and Facility, as part of a sale-leaseback financing transaction. In connection with any such permitted transfer by Seller, Company agrees to execute a written consent to such collateral assignment as may be reasonably requested, which collateral assignment may include, among other terms, Company's agreement not to terminate this PPA on account of any Event of Default without written notice to the Financing Parties and first providing the Financing Parties with such opportunity to cure such Event of Default. If such written consent is not requested, Seller shall notify Company of any such assignment to the Financing Parties no later than thirty (30) Days after the assignment. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

19.3 Purchase Option. At least eighteen (18) months prior to the expiration of the term of this PPA, Company may provide Seller notice of the exercise of its unilateral right to purchase the Facility and all related assets and obligations, including all contracts, at a purchase price no less than the fair market value of the Facility at the expiration of the term of this PPA on reasonable terms and conditions to be negotiated between Company and Seller. If Company and Seller are unable to determine the purchase price, they shall select an independent appraiser to determine the fair market value of the Facility. This purchase option shall expire if Company does not provide notice of its exercise at least eighteen (18) months prior to the expiration of the term of this PPA, or if a purchase and sale agreement is not executed at least six (6) months prior to the expiration of the term of this PPA following good faith negotiations between Company and Seller.

## Article 20 - Miscellaneous

20.1 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment



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of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party (acting unilaterally in violation of this Section 20.1), a non-party, or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra doctrine").

20.3 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Company does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

20.4 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform services for such Party, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by a Party shall be considered employees of the other Party for any purpose; nor shall a Party represent to any person that he or she is or shall become an employee of the other Party.

20.5 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

20.6 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative



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body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.7 Complete Agreement; Amendments. The terms and provisions contained in this PPA, the Interconnection Agreement and the Facility Site Lease constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either oral or written, between Company and Seller with respect to the sale of Solar Energy Output from the Facility. This PPA may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and provided further, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7. If a conflict arises between this PPA and the Interconnection Agreement, the Interconnection Agreement shall prevail.

20.8 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.9 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.10 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

20.11 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of Delaware notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law.

20.12 Confidentiality.

(A) For purposes of this Section 20.12, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.



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(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (D) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its affiliates and any of their directors, officers, employees, financial advisors, legal counsel, accountants, authorized agents of the Receiving Party identified in writing to the Disclosing Party, and current and potential investors (collectively, "Receiving Party's Representatives"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Parties agree that (i) such Receiving Party's Representatives will be informed by the Receiving Party of the confidential nature of the Confidential Information and the requirement and the limitations of its use, (ii) such Receiving Party's Representatives will be required to agree to and be bound by the terms of this Section 20.12 as a condition of receiving the Confidential Information, and (iii) in any event, the Receiving Party will be responsible for any disclosure of Confidential Information, or any other breach of confidentiality provisions of this PPA, by any of its Receiving Party's Representatives. The Receiving Party shall not disclose the Confidential Information to any person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, the Disclosing Party shall use all available means to ensure that such Confidential Information is not made public.

(C) If the Receiving Party or its Receiving Party's Representatives are requested or required (by a FOIA request, oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or by applicable law) to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement, if that notification can be made without violating the terms of such compelled disclosure, so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Section 20.12 with respect to such disclosure. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Receiving Party's Representatives are, in the opinion of their legal counsel, compelled to disclose the Confidential Information, the Receiving Party and its Receiving Party's Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law and, in connection with such compelled disclosure, the Receiving Party and its Receiving Party's Representatives shall use their reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed.

( D) As used in this Section 20.12, "Confidential Information" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other (including electronic) means), or which concerns this PPA, the



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Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(i) information which is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Receiving Party's Representatives;

(ii) information which can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis prior to being furnished to the Receiving Party by the Disclosing Party;

(iii) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party; and

(iv) information developed by the Parties during the negotiation of this PPA that relates solely to this PPA (as opposed to confidential business or operating information of either Party), which information shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties prior to the negotiation of this PPA.

(E) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed.

(F) It is understood and agreed that neither this PPA nor disclosure of any Confidential Information by the Disclosing Party to the Receiving Party shall be



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construed as granting to the Receiving Party or any of its Receiving Party's Representatives any license or rights in respect of any part of the Confidential Information disclosed to it, including any trade secrets included in any such Confidential Information.

(G) In any proceeding before any applicable Governmental Authority relating to this PPA, including, without limitation, the City Counsil of Company, Company shall be entitled to disclose Confidential Information as permitted under Applicable Law. In such event, Company shall take all reasonable steps to limit the scope of any disclosure of Confidential Information and shall use its best efforts to make such disclosure of Confidential Information in an executive session or any protective order or other similar procedure.

20.13 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, and shall jointly agree upon the substance of any information to be provided to the media.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

**White Oak Solar Energy, LLC**

By: _____
_____, its [Manager]

Company:

**City of Dover, Delaware**

By: _____
[name and title]



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## EXHIBIT A
(to PPA)

## NOTICE ADDRESSES

| Company |
| --- |
| **Notices:** |

Seller:

**Registered/Notice Address:**
**Two Tower Center, 11th Floor**
**East Brunswick, NJ 08816**

Attn: David Haden
Email: dhaden@LSPower.com
Phone: 732-867-5852
Fax: 732-249-7290

**Confirmation Address:**
**Two Tower Center, 11th Floor**
**East Brunswick, NJ 08816**

**cc All invoices and notices to:**

Attn: David Haden
Email: dhaden@LSPower.com
Phone: 732-867-5852
Fax: 732-249-7290

**Billing Address:**
**Two Tower Center, 11th Floor**
**East Brunswick, NJ 08816**

Attn: Srinivasan Sridharan
Email: ssridharan@LSPower.com
Phone: 732-867-5882
Fax: 732-249-6750

**Credit Address:**
**Two Tower Center, 11th Floor**
**East Brunswick, NJ 08816**

Attn: Scott Tansey
Email: stansey@LSPower.com
Phone: 732-867-5881
Fax: 732-249-7290

**Legal Address**
**Two Tower Center, 11th Floor**
**East Brunswick, NJ 08816**

Attn: David Sass
Email: dsass@LSPower.com
Phone: 732-867-5853
Fax: 732-249-7290

**Operations/Scheduling Notifications**

Facility Manager
Phone: TBD



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Email: TBD

Plant Control Room: TBD

| | |
|---|---|
| **Wire Transfer Information - US Bank:** | |
| **Account Name:** | To be provided |
| **Bank Name:** | |
| **Bank City and State:** | |
| **ABA# (9 digits):** | |
| **Account #:** | |



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**- EXHIBIT B -**
(to PPA)

## INSURANCE COVERAGES

A. **Worker's Compensation Insurance**. To cover obligations imposed by federal and state statutes pertaining to Seller's employees, and Employer's Liability Insurance with a limit of one million Dollars ($1,000,000).

B. **Commercial General Liability Insurance**, or the equivalent, with a limit of one million Dollars ($1,000,000) per occurrence. This policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations. Dover shall be named as an additional insured with regard to this coverage.

C. **Business Automobile Liability Insurance**, or the equivalent, with limit of one million Dollars ($1,000,000) per accident with respect to Seller's vehicles whether owned, hired, or non-owned.

D. **Excess Liability**. Excess Liability Insurance covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of twenty-five million Dollars ($25,000,000).

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above,

E. **Property Insurance**. During construction and operation, Seller shall provide standard form "All Risk" insurance covering 100% of the project cost. The All-Risk Property insurance shall cover physical loss or damage to the Facility including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility.



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## SCHEDULE I

## SOLAR ENERGY AND ENVIRONMENTAL ATTRIBUTE PAYMENT RATES

| Contract Year | Environmental Attribute Payment Rate ($/MWh) | Solar Energy Payment Rate ($/MWh) |
|---|---|---|
| 2010-2011 | [redacted] | [redacted] |
| 2012 | [redacted] | [redacted] |
| 2013 | [redacted] | [redacted] |
| 2014 | [redacted] | [redacted] |
| 2015 | [redacted] | [redacted] |
| 2016 | [redacted] | [redacted] |
| 2017 | [redacted] | [redacted] |
| 2018 | [redacted] | [redacted] |
| 2019 | [redacted] | [redacted] |
| 2020 | [redacted] | [redacted] |
| 2021 | [redacted] | [redacted] |
| 2022 | [redacted] | [redacted] |
| 2023 | [redacted] | [redacted] |
| 2024 | [redacted] | [redacted] |
| 2025 | [redacted] | [redacted] |
| 2026 | [redacted] | [redacted] |
| 2027 | [redacted] | [redacted] |
| 2028 | [redacted] | [redacted] |
| 2029 | [redacted] | [redacted] |
| 2030 | [redacted] | [redacted] |

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**SCHEDULE II**
Solar Energy Payment Rate Adjustment

| Year | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|---|---|---|---|
| PJM Capacity Factor | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Capacity Percentage | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| | | | | | | | | | | |
| Year | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| PJM Capacity Factor | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Capacity Percentage | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

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