

POWER PURCHASE AGREEMENT

Between

The City of Mesa
(as “Buyer”)

and

SOLON Corporation
(as “Seller”)

Dated _____, 2024

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POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement together with the exhibits referenced herein ("Agreement") is entered into as of the Effective Date, by and between SOLON Corporation, an Arizona Corporation ("Seller"), and the City of Mesa, an Arizona Municipal Corporation ("Buyer").

RECITALS

1. WHEREAS, Buyer owns and operates a municipal utility governed by and through its Council, which has all powers necessary and appropriate to a municipal corporation to establish, purchase and operate public works to furnish its customers with electrical power. Under this authority, Buyer is engaged in the business of locally distributing and delivering electricity to its customers in Mesa, Arizona and buying electricity with the intention of routinely taking physical delivery.
2. WHEREAS, Buyer issued a Request for Proposals for Downtown Mesa Solar Projects, numbered 2021002 ("RFP"), and Seller was selected as a qualified bidder in that RFP in accordance with Buyer's procurement rules.
3. WHEREAS, Buyer is the owner of certain real property (the "Premises") and desires to make a portion of such property (the "Project Site") available to Seller for the construction, installation, operation and maintenance of a solar generating project producing _____ kW-DC of electricity, including support structures, modules, inverters, and monitoring, metering, logging, interconnection and other necessary equipment for the generation of solar power and energy (the "Project").
4. WHEREAS, Buyer further wishes for the Project to create an aesthetically pleasing solar placemaking feature incorporated as part of the Premises in the downtown area of Mesa.
5. WHEREAS, Seller desires to develop, finance, design, construct, install, own and operate the Project, located on the Project Site, and sell to Buyer the Output of the Project.
6. WHEREAS, Buyer wishes to purchase the Output of the Project at a known price and timing and intends to resell the associated electric power and energy to its electric utility customers pursuant to its authority as a Local Electric Utility.
7. WHEREAS, the Parties intend for Buyer to obtain and retain all Environmental Attributes and Generation Attributes of the Project, and Seller to obtain and retain all Tax Attributes of the Project.

NOW, THEREFORE, in consideration of the recitals above and the following promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

GENERAL TERMS AND CONDITIONS

Section 1 – Definitions; Rules of Interpretation

The following initially capitalized terms, whenever used in this Agreement, have the meanings set forth below unless the context of their use clearly indicates otherwise.

Actual GHI: The global horizontal irradiance as determined in accordance with Exhibit E.

Actual kWh: The Output produced by the Project in kilowatt-hours measured and recorded by Seller.

Affiliate: With respect to any Person, any entity controlled, directly or indirectly, by the Person, any entity that controls, directly or indirectly, the Person or any entity directly or indirectly under common control with the Person. For this purpose, “control” of any entity or person means ownership of at least 50 percent of the voting power of the entity or Person.

Agreement: This Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

Applicable Law: Any constitutional provision, statute, rule, regulation, ordinance, code, order, decree, judgment, decision, holding, injunction, license, franchise, permit, or authorization issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

Annual Verification: Has the meaning provided in Section 5(g).

Attachments: Has the meaning provided in Section 8(m).

Business Day: A day other than Saturday, Sunday, or other day on which commercial banks in Arizona are authorized or required by law to be closed. For the purposes of this Agreement, Friday also shall not be a business day, unless or until Buyer in its governmental capacity resumes Friday business operations.

Buyer: The City of Mesa, an Arizona municipal corporation and Local Electric Utility, and all successors and assigns.

Buyer Delay: Delays resulting from (i) changes made to the construction and installation schedule by Buyer, (ii) Buyer’s engineering review exceeding fifteen (15) Business Days, and (iii) any other delays caused by Buyer or any other contractor of Buyer or an approval that is the responsibility of Buyer.

Buyer Event of Default: Has the meaning provided in Section 20(a).

Buyer Requested Shutdown: Has the meaning provided in Section 10(a).

Change in Law: After the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect. Change in Law does not include changes in federal or state income tax laws or changes in state, county or other local ad-valorem or other real or personal property tax laws. Change in Law includes material changes in the interpretation of an Applicable Law by any court of competent jurisdiction.

Certification of Commercial Operation: Means that certain certification of Seller in substantially the form attached hereto as Exhibit K.

Commercial Operation Date: The date, which shall be specified by Seller to Buyer pursuant to Section 2(c), when the Project (i) is mechanically complete, (ii) is successfully interconnected to Buyer's Local Electric Utility consistent with the Interconnection Agreement, and (iii) is capable of generating Output consistent with its nameplate ratings in accordance with the manufacturer's specifications and the terms of this Agreement.

Confidential Information: Information of a confidential or proprietary nature specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

Construction Start Date: Has the meaning provided in Exhibit M.

Contract Year: The 365 days (or 366 days in a leap year) after each anniversary of the Commercial Operation Date.

Decommissioning Period: Has the meaning provided in Section 9(e).

EA Agency: Any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, without limitation, the Clean Air Markets Division of the United States Environmental Protection Agency (together with any successor agency, the "EPA"), Arizona Corporation Commission, Arizona Department of Environmental Quality, the Western Electricity Coordinating Council (and the Western Renewable Energy Generation Information System) and any successor commission(s) or agency(ies) thereto.

Early Termination Amount: An amount set forth in Exhibit B, stating the dollar amount payable as damages from Buyer to Seller as liquidated damages for the early termination of the Agreement as of the applicable anniversary date.

Effective Date: Has the meaning provided in Section 2(b).

Energy Purchase Rate or Rate: The amounts payable in US dollars/kWh for Output as set forth in Exhibit A.

Energy Scheduling Agent: The entity that acts on behalf of Buyer acting in its capacity as the Local Electric Utility to purchase and sell energy across its transmission balancing authority to match the local

distribution area electrical load to electrical resources. Buyer's Energy Scheduling Agent is listed in Exhibit I.

Environmental Attributes: Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its Output and its displacement of fossil fuel energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, but excluding, for the avoidance of doubt, any Tax Attributes.

Environmental Laws: Has the meaning provided in Section 4(I).

Expected GHI: The expected Global Horizontal Irradiance as determined in accordance with Exhibit E.

Expected Production of Output: The expected Output values in kWh as set forth in Table 1 on Exhibit E.

Fair Market Value: The amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, taking into account the present value of all associated future income streams expected to arise from the operation of the Project for the remaining useful life of the Project, including but not limited to the expected price of electricity, Environmental Attributes, Generation Attributes and Tax Attributes and factoring in future avoided costs and expenses associated with the Project and assuming the Project is able to generate revenue for the then-remaining term of the Agreement at a price equal to the then-applicable Rate and thereafter for the remaining useful life of the Project at a price equal to the then fair market price for energy.

Financing Party(ies): Persons providing financing to Seller in connection with the Project.

Force Majeure Event: An event or circumstance which prevents one party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a Force Majeure Event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, war, terrorism or riot or a Public Health Event (but a Force Majeure Event shall not include a pandemic, epidemic or other similar event in the absence of a Public Health Event); provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure Event absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure Event as defined in the first sentence hereof has occurred. Within the terms of this Agreement, the COVID-19 pandemic shall not be considered a Force Majeure Event unless unforeseen Governmental Authority action with respect to the COVID-19 pandemic renders Seller's performance of its obligations hereunder impossible or illegal. Notwithstanding the foregoing, Force Majeure Event shall not be based on (a) Seller's delay or inability to obtain financing, or other economic hardship of any kind or (b) a loss or failure of materials or equipment for the Project, or (c) as otherwise provided in Section 17.

Generation Attributes: Those attributes of the Project and its Output related to the generation and transmission of electrical capacity, power and energy including Scheduling Services, Reactive Services, Regulation Services, Energy Imbalance Services, Operating Reserves Services, and Generator Imbalance Services all as defined or used by the Western Area Power Administration, or any successor in interest thereto as well as any similar, related or ancillary attributes related to capacity, generation, transmission or distribution.

Governmental Authority: Any federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws, and including any department, commission, bureau, board, administrative agency, or regulatory body thereof; or any corporation or other entity owned or controlled by any of the foregoing.

Guarantee Period: Each successive twelve (12) month anniversary of the Commercial Operation Date.

Guaranteed Commercial Operation Date: The date listed in Exhibit M.

Guaranteed Construction Start Date: The date listed in Exhibit M.

Guaranteed Project Milestones: The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and other associated dates and schedules listed in Exhibit M.

Hazardous Materials: All hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, per- or polyfluoroalkyl substances, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

Initial Period: Has the meaning provided in Section 2.

Installer: The Person designated by Seller to install the Project on the Project Site. If the Installer is Seller, then Seller and Installer may be used interchangeably wherever applicable.

Insurance Requirements: Means the insurance coverage requirements set forth in Exhibit F.

Intent to Proceed Conditions: Has the meaning provided in Section 4(c).

Interval Data Recorder or IDR: A digital device for industry standard performance monitoring and telemetry and revenue grade metering of electric power and energy with the ability to: (i) create a live signal to encode that data with a refresh rate of no greater than 15 minutes, and (ii) create and store a digital log of the data for a period no less than 15 calendar days.

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller and Buyer acting in its capacity as the Local Electric Utility governing the terms and conditions of Seller’s interconnection with the Buyer’s local electric distribution system, including any description of the plan for interconnection of the Project.

kWh: The composite unit of energy equal to one kilowatt of power sustained for one hour.

Liens: Has the meaning provided in Section 8(i).

Local Electric Utility: The local electric distribution system owner and operator which under the laws of the State of Arizona provides electric distribution and interconnection services at the Premises and the Project Site. For the purposes of this Agreement, Buyer is the Local Electric Utility.

Loss(es): Any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including reasonable attorney's fees and other reasonable costs and expenses), in each case, arising from any third-party claim.

Loss Period: Has the meaning provided in Section 12(d).

Major System Maintenance: The removal of Project Solar Generation Equipment from service for inspection, maintenance and/or general overhaul. To qualify as Major System Maintenance, the work must be of the type that is (i) necessary to reliably maintain the operation or aesthetics of the Project, and (ii) directly causes the expected generation level of the Project to be reduced by at least 10 kW.

Meter Test: Has the meaning provided in Section 5(g).

Minimum Production Limit: The minimum Output values in kWh for each Contract Year as set forth in Table 1 on Exhibit E.

Notice: Has the meaning provided in Section 24.

Notice of Intent to Proceed: Has the meaning provided in Section 4(c).

Operations Period: Has the meaning provided in Section 2.

Output: The electrical energy (including real power and energy and reactive power and energy) produced by the Project.

Output Guarantee Payment: The payment from Seller to Buyer in the event the Minimum Production Limit is not met (on a cumulative basis) during the relevant Guarantee Period, calculated as set forth in Section 5(i).

Party: Either Buyer or Seller, as the context shall indicate, and "Parties" means both Buyer and Seller.

Performance Guarantee Payments: The daily liquidated damages due to Buyer if certain Guaranteed Project Milestones are not met, as more particularly set forth in Exhibit M.

Permitted Extension: Has the meaning provided in Exhibit M.

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

Planned Outage: Has the meaning provided in Section 8(f).

Point of Delivery: Identified in Exhibit E.

Power Specifications: Means those specifications more particularly set forth in Exhibit I.

Premises: The real property owned by Buyer which includes the Project Site as described in Exhibit D.

Project: An integrated system for the generation of approximately ____ kW-DC of electric power and energy from solar insolation consisting of the Solar Structure, Solar Generation Equipment, and Interval Data Recorder, to be constructed, installed, owned, operated and maintained by Seller on the Project Site in accordance with this Agreement. The Project shall include all supporting structures and any supporting underground infrastructure and footings installed under such structures. The Project shall include all electrical conduit, conductor, equipment and facilities up to the Point of Delivery.

Project Installed Inverter Capacity: The sum of the nameplate ratings (AC) of all Project inverters on the Commercial Operation Date.

Project Installed Maximum Inverter Capacity: The maximum allowed sum of the nameplate ratings (AC) of all Project inverters as listed in Exhibit E.

Project Installed Maximum Module Capacity: The maximum allowed sum of the nameplate ratings (DC) of all Project solar modules as listed in Exhibit E.

Project Installed Module Capacity: The sum of the nameplate ratings (DC) of all Project solar modules on the Commercial Operation Date.

Project Loss: Has the meaning provided in Section 12(c).

Project Site: The portions of the Premises covered by the Site License as described in Exhibit C attached hereto and on which the Project will be located.

Prudent Industry Practices: Means, with respect to any services being provided or obligations being performed pursuant to this Agreement, those practices, methods, equipment, specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly provided for commercial and industrial solar energy systems of a type and size similar to the Project in the Southwestern United States, including Arizona, Texas and New Mexico that in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection and expedition.

Public Health Event: Any one or more of the following but only if and as declared by an applicable Governmental Authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious

disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

Purchase Option: Has the meaning provided in Section 9(a).

Purchase Price: Has the meaning provided in Section 9(a).

Relocation Event: The relocation of the Project (or portion thereof), starting at the shutdown of the Project (or portion thereof) pursuant to such relocation, and ending at the reenergization of the Project (or portion thereof) when such relocated Project (or portion thereof) is reinstalled, operational, and interconnected with Buyer's Local Electric Utility at a new location.

Renewable Energy Certificate (REC): A certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of power and energy (a product commonly associated with the generation of one (1) megawatt-hour (MWh)) from an eligible renewable energy source by an eligible renewable energy project. The Parties acknowledge that the Western Renewable Energy Generation Information System (WREGIS) issues and tracks renewable energy certificates (RECs) for generation of renewable-source electricity in the geographic area covered by the Western Electricity Coordinating Council (WECC). WREGIS also facilitates REC transfers, enables permanent retirement of RECs, assists regulators with the implementation of their renewable energy programs, and brings transparency to REC markets.

RFP: Has the meaning provided in the Recitals.

Seller: SOLON Corporation, an Arizona Corporation, and all successors and assigns.

Seller Event of Default: Has the meaning provided in Section 19(a).

Site License: The license granted to Seller by Buyer covering the Project Site as more particularly set forth in Section 3 of this Agreement and inclusive of those certain Site Use Provisions more particularly set forth in Exhibit G.

Site Use Provisions: Those terms and conditions governing Seller's use of the Site as described and set forth in Exhibit G.

Solar Generation Equipment: The modules (as identified by Project Installed Module Capacity), inverter(s) (as identified by Project Installed Inverter Capacity), conductors, junction panels, switchgear, IDR (including associated metering devices, data logging equipment, communications devices) and all other major components involved in generating, measuring and delivering Output.

Solar Structure: The parts of the Project used to support the photovoltaic modules and associated equipment as shown in Exhibit E.

Tax Attributes: Any investment tax credits (including any grants or payments in lieu thereof), production tax credits, as well as any tax deductions, accelerated depreciation or other benefits under the Internal Revenue Code or applicable federal, state, or local law related to the taxation of income and available as a result of the ownership and operation of the Project.

Test Energy: Output (to the extent available) generated by the Project and delivered to the Point of Delivery prior to the Commercial Operation Date.

Term: Shall have the meaning provided in Section 2.

Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

Section 2 – Term

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, “Term” shall mean the Initial Period, commencing on the Effective Date, and if applicable, the Operations Period, commencing on the Commercial Operation Date, all as more fully set forth in Exhibit M, and in each case subject to early termination pursuant to the terms of this Agreement.

(b) Initial Period. The Initial Period shall be the period of time between the Effective Date and the Commercial Operation Date, as applicable. The “Effective Date” shall be the date of Buyer’s signature below; provided that all of the following conditions have been fully satisfied by such date:

- i. The transactions set forth in this Agreement have been approved by Buyer’s City Council;
- ii. Seller has fully signed and completed this Agreement and provided both this Agreement and the Conditions Precedent Documentation listed in Exhibit L to Buyer; and
- iii. This Agreement has been signed by Buyer’s representative(s) as authorized by Buyer’s City Council.

(c) Commercial Operation Date. The Commercial Operation Date shall be the date set forth in the Certification of Commercial Operation in the form set forth in Exhibit K, duly signed and certified by Seller.

(d) Operations Period. As applicable, the Operations Period will commence on the Commercial Operation Date, and will terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date.

Section 3 – Access Rights

(a) Project Access Rights. Beginning on the commencement of the Initial Period, Buyer grants to Seller and Seller’s agents, employees, and contractors a non-exclusive license for the Project for access to the Project Site and incidentally on portions of the Premises (the “Site License”) for the purposes of installing, constructing, operating, owning, maintaining, accessing, repairing, removing and replacing the Project, including the Solar Structure, Solar Generation Equipment, Interval Data Recorder, and such other lines and equipment as is necessary to operate and interconnect the Project to the Local Electric Utility, which license shall be under and subject to, and with the benefit of, those certain Site Use Provisions more particularly set forth in Exhibit G hereto. The foregoing Site License is non-revocable except upon expiration or earlier termination of this Agreement as described herein, at which time such Site License shall continue for a period of one hundred eighty (180) days to permit Seller’s removal of the Project in accordance with Section 9, except in the case where Purchaser exercises its Purchase Option.

Section 4 – Planning, and Construction of the Project

(a) Site Assessment and Planning. Seller, at no cost to Buyer, shall be responsible for site assessment of the Premises and the Project Site, and planning of Project. During the Initial Period, Seller shall have the right, at its own cost and expense, to assess the suitability of the Project Site for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to, without limitation: inspect the physical condition of the surfaces and structures on which the Project will be located; apply for, and receive, applicable building, zoning and use permits or other governmental authorizations necessary for the construction, installation and operation of the Project; perform any other real estate due diligence; apply for, and receive, all applicable grants or incentives, or other determinations necessary for the construction, installation and operation of or receipt of revenues from the Project; apply for and upon approval receive a fully executed Interconnection Agreement (in substantially the form attached hereto as Exhibit H) with the Local Electric Utility; and to make any other investigation or determination necessary for the financing, construction, installation, operation and maintenance of the Project. Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense any zoning, land use and building permits (including zoning and permits from Buyer in its governmental capacity) required to construct, install and operate the Project.

(b) Project Design.

(i) Engineering Design Drawings. Buyer shall have the right to review and accept the Project’s engineering design drawings, which review shall not exceed fifteen (15) Business Days and which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller shall not be required to accept changes to the Project’s engineering design that would conflict with Seller’s internal construction and engineering standards dated ___ or its Financing Parties’ design requirements, in each case as consistent with Prudent Industry Practices and Applicable Law, and as provided to Buyer prior to the Effective

Date. If the Parties are unable to agree on final engineering design drawings, Seller may terminate this Agreement in accordance with Section 4(d) below.

(ii) Plans and Certifications. Buyer shall have the right to review and approve, such approval not to be unreasonably withheld, conditioned, or delayed, the following plans and certifications: (a) Tree removal plan; (b) Parking light removal and replacement plan; (c) Bird prevention plan; (d) Fire parking and drive aisle plan; (e) Wiring layout plan; (f) Steel material certifications; and (g) Welder Certifications (the "Construction Plans and Certifications"). If the Parties are unable to agree on final Construction Plans and Certifications, Seller may terminate this Agreement in accordance with Section 4(d) below.

(c) Notice of Intent to Proceed. Seller shall not commence construction and installation of the Project until Seller has achieved the following conditions (collectively, the "Intent to Proceed Conditions"):

- i. Completed all Site Assessment and Planning as set forth in Section 4(a) to Seller's reasonable satisfaction;
- ii. Confirmed that Seller has received all information necessary to obtain all applicable Tax Attributes;
- iii. Confirmed that Buyer will obtain all applicable Environmental Attributes;
- iv. To the extent applicable, received approval of this Agreement by Seller's Financing Parties;
- v. Received all necessary zoning, land use and any building or other permits or approvals;
- vi. Received Buyer's acceptance of the Project's engineering design drawings;
- vii. Provided Buyer proof of insurance consistent with the requirements of this Agreement;
- viii. Received Buyer's acceptance of the Construction Plans and Certifications;
- ix. Finalized design and component selection and obtained a completed Interconnection Agreement; and
- x. Provided Buyer with notice of its intent to proceed (the "Notice of Intent to Proceed") which notice shall include written confirmation that the Intent to Proceed Conditions have been achieved and/or satisfied, the documentation detailed in this section to be provided to Buyer, and a Seller warranty that Seller, as of the date of the Notice of the Intent to Proceed, has, through its own due diligence, independently (1) had a full and fair opportunity to review the Project Site and the Premises (including physical configuration and structural load capacity and stability) and any impacts involving the existing uses occurring therein and thereon as well as of the Project itself, and (2) subject to unforeseen conditions, has determined that same will not affect the levels of insolation,

cause any malfunction in the operation of the Project, or otherwise adversely affect the Project as contemplated, the Project Site, or the Premises as then in existence. The Seller warranty in this Section shall be subject to the provisions of Section 4(e) regarding unforeseen conditions.

Seller shall give the Notice of Intent to Proceed to Buyer and Buyer shall have ten (10) Business Days to review such Notice, at which time Buyer will issue a Notice to Proceed or identify any deficiencies. Upon receipt of the Notice to Proceed, Seller may commence with construction and installation of the Project. If Buyer reasonably determines that certain Intent to Proceed Conditions have not been met, Seller shall submit to Buyer a new Notice of Intent to Proceed once any identified issues have been corrected.

(d) Termination of Development Activities prior to Notice to Proceed.

- i. By Seller: At any time prior to provision to Buyer of the Notice of Intent to Proceed, Seller shall have the right to cease development of the Project, for any reason, in its sole discretion. If Seller gives Buyer notice of such early termination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Seller shall remove any equipment or materials which Seller has placed or installed on the Project Site, the Premises or other property of Buyer; (ii) Seller shall restore any portions of the Project Site and Premises disturbed by Seller to its pre-existing condition, ordinary wear and tear excepted; and (iii) the confidentiality provisions of Section 14, and the indemnity obligations under Section 15 hereof shall continue to apply for the respective time periods set forth therein notwithstanding the termination of this Agreement.
- ii. By Buyer: If Buyer does not receive the Notice of Intent to Proceed and all accompanying documentation at least ten (10) days prior to the Guaranteed Construction Start Date (as adjusted after giving effect to Permitted Extensions), Seller shall pay Buyer Performance Guarantee Payments listed in Exhibit M for each calendar day following the Guaranteed Construction Start Date (as adjusted after giving effect to Permitted Extensions) until such date the Notice of Intent to Proceed is delivered to Buyer or Seller terminates this Agreement pursuant to Section 4(d)(i) above.

(e) Construction; Unforeseen Conditions. Seller, at no cost to Buyer, shall be responsible for the construction and installation of the Project in a good and workmanlike manner in accordance with all Applicable Laws and with the Project Installed Module Capacity, Project Installed Inverter Capacity, Power Specifications, and other specifications set forth in Exhibit E and I, and the Interconnection Agreement in Exhibit H, all as more fully set forth herein. Notwithstanding the foregoing and the delivery of its Notice of Intent to Proceed, if Seller encounters the need to incur material additional costs to re-design, construct, install or maintain the Project due to unforeseen conditions at the Project Site and/or Premises, which conditions were not reasonably discoverable

in the exercise of due diligence by Seller during its assessment of the Project Site and the Premises in accordance with Section 4(a) above, then Seller may request an equitable adjustment to the pricing, schedule and other terms of this Agreement to reasonably compensate Seller for such costs while reasonably preserving the economic value of this Agreement to both Parties.

(f) Timing of Project and Delay Payments. Subject to a Permitted Extension as provided on Exhibit M, Seller must adhere to and comply with the Guaranteed Project Milestones and associated dates and schedules listed in Exhibit M. Failure to make timely progress and comply with the Guaranteed Project Milestones shall subject Seller to the Performance Guarantee Payments listed in Exhibit M. Subject to the Guaranteed Project Milestones, concurrent with Seller's Notice of Intent to Proceed, Seller will provide Buyer with a projected schedule for construction and installation of the Project, inclusive of the expected days during which Seller and/or its contractors will be on the Premises. Buyer shall have five (5) days to review and reasonably comment on the proposed schedule, which reasonable comments will be incorporated by Seller. The schedule will be subject to further reasonable changes during the construction and installation of the Project by either Party by providing five (5) days' notice, provided that Buyer shall reimburse Seller for any additional costs or expenses reasonably and necessarily incurred by Seller or its contractors as a result of schedule changes requested by Buyer. Construction and installation of the Project, successful interconnection, and provision by Seller to Buyer of the Certification of Commercial Operation must occur on or before the Guaranteed Commercial Operation Date as adjusted after giving effect to Permitted Extensions.

(g) Equipment Storage. Within a reasonable period following Seller's request, Buyer will provide a designated area on the Premises or a Buyer-owned property within ¼ mile of the Premises, if available (or as close as reasonably possible to the Premises, if such area is not available within ¼ mile of the Premises), for storage of construction equipment, tools, materials and other supplies. Buyer agrees that its normal security measures, practices, and policies which apply to its own properties shall also apply to the Project Site. However, Buyer shall not be liable for theft, vandalism, or other damage to such stored equipment, tools, materials and other supplies.

(h) Modification. Prior to commencement of construction, Seller may make reasonable modifications to the design of the Project for technical purposes, including the selection of the components in the Project, provided, however, that such changes shall not result in (i) a change in the Project Installed Module Capacity or Project Installed Inverter Capacity in excess of the Project Installed Maximum Module Capacity and Project Installed Maximum Inverter Capacity, respectively or (ii) a material change in the Solar Structure footprint, location or height, in each case of (i) or (ii), as set forth in Exhibits C and E, nor may Seller make a change that materially affects the aesthetic design of the Project. In all cases, Project Site development shall comply with all Applicable Laws, and Seller shall reasonably cooperate with Buyer's planners, designers, architects, and engineers in the construction and installation of the Project.

(i) OSHA and Blue Stake Compliance. Each Party shall comply with all applicable Occupational Safety and Health Act (OSHA) requirements and other similar safety laws or codes in the performance of that Parties obligations under this Agreement. Seller will contact Blue Stake (1-800-blue-stake) prior to performing any underground excavation.

(j) Contractors. Seller must use licensed contractors to perform the work of constructing, installing and maintaining the Project. Seller intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, in each case subject to the reasonable advance approval of Buyer, which approval will not be unreasonably withheld, conditioned or delayed. Seller must advise Buyer of the proposed Installer and obtain approval of Buyer prior to commencement of the work on the Project Site. Seller is responsible for the conduct of Installer and its subcontractors, and Buyer shall have no contractual relationship with Installer or its subcontractors in connection with the Project. Seller must ensure that Installer maintains insurance applicable to the Installer's activities and the Project that satisfy the requirements in Exhibit F. All contractors shall be subject to background checks by Buyer, and Seller shall notify Buyer of its intent to use a contractor prior to such contractor's entry on the Premises. Seller shall be responsible for directing the work of all Seller's contractors. Seller shall require all contractors to sign an agreement requiring compliance with the terms this Agreement, and shall be responsible for ensuring such compliance. Seller shall also be responsible for payment of any compensation due to any approved contractors. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to contractors.

(k) Status Reports. Seller must give Buyer bi-weekly (every second week) updates (or more frequently if reasonably requested by Buyer), which must include:

- i. the progress of construction and installation of the Project, including meeting all Guaranteed Project Milestones.
- ii. any delays in construction and installation of the Project and whether those delays are anticipated to impact the expected construction timeline and completion of Guaranteed Project Milestones.
- iii. notification of when performance testing and Certification of Commercial Operation of the Project will commence in accordance with Section 4(m) and Section 4(o) below, respectively.

The Parties shall agree on a format of the status reports prior to commencement of construction.

(l) Hazardous Materials during Project Construction.

Buyer hereby represents that to the actual knowledge of Buyer as of the Effective Date with respect to Hazardous Materials: (1) Buyer is, and has been, in compliance with all Applicable Laws relating to Hazardous Materials ("Environmental Laws"); and (2) neither the Premises nor the Project Site is currently in violation of Environmental Laws. In addition, Buyer hereby represents that Buyer has not received written notice from any Governmental Authority of any pending or threatened violation of, or liability under any Environmental Laws with respect to the Premises or Project Site. Upon encountering any Hazardous Materials, Seller will immediately stop work in the affected area and duly notify Buyer and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Project Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Project Site, Buyer may opt to remediate the Project Site so that the Project may be installed or determine that it is not economically justifiable or is otherwise impractical to remediate the Project Site. Seller shall be obligated to resume work at

the affected area(s) of the Project Site only after Buyer notifies Seller and Installer that Buyer has complied with all Applicable Laws, and Seller obtains a qualified independent expert (the cost of which shall be borne equally by the Parties) that provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction.

- i. Seller agrees and acknowledges that Buyer is not responsible for any Hazardous Materials introduced to or dispersed at the Premises or any equipment storage area by Seller or Seller's contractors, nor is Buyer required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.
- ii. If Hazardous Materials are encountered during the Initial Period on the Premises which impact the Project and Buyer determines that environmental remediation is economically unjustifiable, then this Agreement shall terminate and Buyer shall reimburse Seller for its actually incurred costs to such date of termination (not to exceed thirty thousand dollars \$30,000).
- iii. Seller is not responsible for any Hazardous Materials encountered at the Premises and/or the Project Site except to the extent introduced by Seller or its contractors, or encountered and dispersed by Seller or its contractors.

(m) Testing. When Seller has completed construction and installation of the Project, Seller shall provide written notice to Buyer, and the Parties shall coordinate the initiation of testing whereby the performance of the Project will be demonstrated by providing Test Energy as set forth in Exhibit E. Buyer shall have the right to have its representatives present during the testing process.

(m) Interconnection. The Project must also demonstrate performance consistent with the Local Electric Utility's interconnection specifications on Exhibit I in all respects. Buyer shall have the right to have its representatives present during the testing process. Seller agrees to abide by the terms and conditions of the Interconnection Agreement attached in Exhibit H.

(o) Certification of Commercial Operation and Occurrence of Commercial Operation Date. Upon successful performance testing and interconnection of the Project in accordance with the Interconnection Agreement, Seller shall complete a Certification of Commercial Operation in substantially the form attached hereto as Exhibit K and deliver it to Buyer in accordance with Section 2 of this Agreement at which time Buyer will have five (5) Business Days to sign and return a copy to Seller.

(p) Documentation. No later than sixty (60) days following the Commercial Operation Date, Seller shall provide Buyer with all as-built drawings and other documentation required to create a complete record of the design and build of the Project and its specifications, including the Project Installed Module Capacity, Project Installed Inverter Capacity, and as otherwise specified in Exhibit E. The Parties acknowledge and agree that the Project Installed Module Capacity may vary slightly from that listed in Exhibit E between the Effective Date of this Agreement and the Commercial Operation Date due to minor design or equipment changes inherent to the design and construction process (but in no event shall exceed the Project Installed Maximum Module Capacity). This final Project Installed Module Capacity shall be documented in the as-built drawings and incorporated in this Agreement as Exhibit O.

(q) MAG Standards. The design and construction material shall conform to MAG Standards and all applicable Standard Details for Construction. MAG Standards are available at:

<https://azmag.gov/Programs/Public-Works/Specifications-and-Detail>

Section 5 – Sale and Purchase of Output

(a) Sale of Output. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Seller shall sell exclusively to Buyer and Buyer shall purchase from Seller all of the Output produced by the Project at the applicable Energy Purchase Rate in Exhibit A. Buyer shall not be responsible for any payment for Test Energy.

(b) Delivery of Electricity. The Point of Delivery shall be as indicated in Exhibit E. The Output from the Project shall be delivered from Seller to Buyer at the Power Specifications set forth in Exhibit I to the Point of Delivery.

(c) Expected Output. Subject to the limitations set forth in this Agreement, the Project, as constructed and installed by Seller, will collectively (but intermittently), within each Contract Year, produce Output equal to or above the Minimum Production Limit, as specified in Exhibit E to this Agreement. Failure of the Project to produce Output equal to or above the Minimum Production Limit shall be governed by Section 5(i) below.

(d) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL WARRANTIES, WHETHER IMPLIED OR EXPRESS, AND INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY SELLER. BUYER, AS THE LOCAL ELECTRIC UTILITY, IS RESPONSIBLE FOR INSTALLATION AND OPERATION OF ANY EQUIPMENT ON BUYER'S SIDE OF THE POINT OF DELIVERY NECESSARY FOR ACCEPTANCE OF THE OUTPUT.

(e) Metering and Remote Monitoring; Accuracy. Seller, at its sole cost and expense, shall install one Interval Data Recorder (IDR) at the Project Site with the ability to measure the Output of the Project at the Point of Delivery in minimum intervals no greater than 15 minutes, and provide that real-time telemetry data and those other data specified in Exhibit E to Buyer and Buyer's Energy Scheduling Agent. Seller will communicate data from the IDR to a secure internet portal or equivalent for monitoring the real-time Output of the Project that can be accessed by Buyer and its Energy Scheduling Agent. Seller will be responsible for connecting the Interval Data Recorder to the internet through its own cellular connection, public access point or other method so that it is possible for Seller, Buyer and Buyer's Energy Scheduling Agent to remotely monitor the Project. Buyer shall not be responsible for providing internet access to the Project. Seller shall own, operate and maintain the IDR at Seller's sole cost and expense and in accordance with Prudent Industry Practices. If Buyer subsequently changes its Energy Scheduling Agent, enters a different electric transmission balancing authority or otherwise alters the metering data telemetry requirements, Buyer shall be responsible for the costs of modifying metering data telemetry to accommodate those changes. Buyer shall have the right, but not the obligation, to install electric meter(s) ("Buyer Meter") to verify the accuracy of Seller's meter(s), provided that (i) Buyer shall be responsible for providing communications to Buyer's meter to the Project, (ii) Buyer notifies Seller of such installation and (iii) the referenced equipment is of equal or greater

quality to Seller's meter, is maintained in accordance with Prudent Industry Standards for utility meters and does not interfere with Seller's metering equipment. Unless known or determined to be defective, the Buyer Meter shall take precedence in events of dispute of accuracy with Seller's meter. If Seller's meter is known or determined to be defective, Seller shall have the right to use metered data from the Buyer Meter for billing and reporting purposes. For any discrepancies between the Buyer Meter and Seller's meter in excess of 2%, where neither meter is known to be defective, either Party shall have the right to request a meter test in accordance with Section 5(g) below. If the Buyer Meter is found to be the one that is inaccurate, Buyer will bear the cost of the testing and any correction. If Seller's meter is found to be inaccurate, Seller will bear the cost of the testing and any correction. Each Party shall own all data generated by their meter.

(f) Output - Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output at and from the Point of Delivery. Title to and risk of loss as to all Output shall pass from Seller to Buyer at the Point of Delivery. Seller warrants that it shall deliver all Output to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.

(g) Meter Testing. Seller shall verify the accuracy between (i) the Project's inverter data and (ii) Seller's meter and other IDR components, (as necessary), accounting for typical system losses, not less than once in a calendar year by comparing the sum of energy production for the prior Contract Year ("Annual Verification"). Seller shall also conduct a test of each Seller's meter in accordance with Prudent Industry Practices, not less than once in any one (1) year period ("Meter Test"). Seller shall provide Buyer notice at least five (5) days in advance so that Buyer can witness the Meter Test. Buyer shall pay for any independent testing of Seller's meter(s) in excess of such minimum Meter Test schedule that Buyer deems necessary, except if, after such testing, Seller's meter is shown to be in error by more than 2%. In all cases where Seller's meter is shown to be in error in excess of 2%, Seller shall pay for the cost of such testing and shall make, corresponding adjustments to the records of the Output provided by the Project based on the period that is half-way in between the date of such testing and the last prior test date of the meter with corresponding billing adjustments as follows:

- In the event there is an error of greater than 2%, Seller shall adjust the next invoice to be provided to Buyer under Section 6 hereof, to either charge Buyer additional amounts for energy Output produced over the previously stated meter amount during the applicable period at the applicable Rate, or to provide Buyer a credit against billing for Output produced under the previously stated meter amount during the applicable period, provided, however, that any deficiencies or credits not theretofore applied or satisfied at the expiration or earlier termination of the Operations Period shall be settled in cash.
- All adjustments remain subject to the applicable Rates.

(h) Inverter and Ancillary Equipment Power. During the Operations Period, no equipment other than the installed inverters for the Project, IDR, associated metering and telemetry equipment and such other equipment as is reasonably necessary to operate and maintain the Project in accordance with Prudent Industry Practices may be powered by the Project or receive power from the Local Electric Utility. Energy that flows from Buyer's Local Electric Utility to the IDR and installed inverters will not offset the Output.

(i) Seller Output Guarantee. If, during each applicable Guarantee Period, the cumulative Actual kWh generated by the Project during such Guarantee Period is less than the applicable Minimum Production Limit for such Guarantee Period, then Seller shall make an Output Guarantee Payment to Buyer in the amount equal to the difference between the Minimum Production Limit and the cumulative Actual kWh multiplied by the Energy Purchase Rate per kWh for such applicable Guarantee Period. Seller will make the Output Guarantee Payment within thirty (30) days after the end of the relevant Guarantee Period. Notwithstanding the foregoing, Seller shall not be responsible for any such shortfall in Actual kWh to the extent arising out of (i) a Force Majeure Event, (ii) an outage or other shutdown as provided for herein, (iii) a reduction in the Project's access to sunlight not caused by Seller, (iv) Buyer's failure to perform, or breach of, its obligations under this Agreement, or (v) Project failure, damage, loss or outage not caused by Seller or its approved service providers.

Section 6 – Payment and Billing

(a) Rates. Buyer shall pay Seller for the Output at the Energy Purchase Rates set forth in Exhibit A attached hereto. Buyer shall have no obligation to make payments to Seller prior to the Commercial Operation Date. Payment of the Energy Purchase Rates shall be the only compensation payable from Buyer to Seller under this Agreement for or in respect of the Output, Generation Attributes and Environmental Attributes.

(b) Billing. Buyer shall pay for the Output monthly in arrears. After the end of each calendar month, Seller shall provide Buyer with an invoice setting forth the Output quantities produced by the Project in such month (in kWh); the applicable Rates for such Output quantities; and the total amount due, which shall be the product of the Output quantities and the applicable Rates.

(c) Invoice Delivery. Invoices shall be in writing, provided to Buyer on or before the tenth (10th) day of the month following the calendar month to which such invoice pertains, include the service month, payment information, and contact information for any billing disputes, and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; or (iv) transmitted by email, addressed as follows:

City of Mesa Energy Resources Department
P.O. Box 1466
Mesa, AZ 85211-1466
Attention: Energy Resources Coordinator
Email: DSWBilling@mesaaz.gov

(d) Payment. Buyer shall pay each invoice within thirty (30) days of receipt. Payments shall be made by electronic funds transfer to an account designated by Seller in the invoice or in a written notice delivered to Buyer. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed under Applicable Law.

(e) Disputed Invoices. If Buyer objects to all or a portion of an invoice, Buyer shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement setting forth in reasonable detail the basis for its objections. If Buyer does not object prior to the date payment of any invoice is due, Buyer shall be obligated to pay the full amount of such invoices, but Buyer may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Buyer may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

Section 7 –Tax Attributes and Environmental Attributes, Generation Attributes and Resale of Electricity

(a) Ownership of Tax Attributes. Seller (and/or Financing Party) shall at all times during the term of this Agreement be the owner of any Tax Attributes that may arise as a result of the ownership and operation of the Project and shall be entitled to transfer such Tax Attributes to any Person as allowed by Applicable Law. Buyer shall provide reasonable assistance to Seller in preparing all documents necessary for Seller to receive such Tax Attributes, and if Buyer is deemed to be the owner of any such Tax Attributes, Buyer shall transfer and assign the same to Seller immediately to the fullest extent allowed by Applicable Law. If Buyer receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Seller.

(b) Environmental Attributes. Buyer shall at all times be the owner of all right, title and interest in and to the Environmental Attributes associated with or arising in any way from the Output and the Project, without any additional remuneration or compensation to Seller beyond that set forth in Section 6(a) for the Output. Seller agrees to transfer and assign such Environmental Attributes to Buyer immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Output from the Project. If Seller is deemed to be the owner of any Environmental Attributes, Seller shall transfer and assign the same to Buyer immediately to the fullest extent allowed by Applicable Law, and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Buyer. Seller represents and warrants that Seller has not assigned or conveyed the rights to all Environmental Attributes from the Project to any other Person. If Seller receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Buyer. Buyer shall be entitled to transfer such Environmental Attributes to any Person.

(c) Documentation of Environmental Attributes. Seller, at its own expense, shall (i) execute all such documents and instruments as are necessary in order to demonstrate Buyer's full and complete title to and ownership of the Environmental Attributes and (ii) reasonably cooperate with Buyer so that Buyer may record ownership of such Environmental Attributes with the applicable EA Agency.

(e) Generation Attributes. Buyer shall at all times be the owner of all right, title and interest in and to the Generation Attributes associated with the Project without any additional

remuneration or compensation to Seller beyond that set forth in Section 6(a) for the Output. Buyer shall be entitled to receive any payments or other forms of credit for all Generation Attributes, that may become available as a result of the construction or operation of the Project. Buyer and Seller shall reasonably coordinate in preparing all documents necessary for Buyer to receive such payments or credits, and if Seller is deemed to be the owner or provider of Generation Attributes, Seller shall assign the same to Buyer to the fullest extent allowed by Applicable Law. If Seller receives any payments in respect of Generation Attributes it shall promptly pay them over to Buyer. Buyer shall be entitled to transfer such Generation Attributes to any Person.

(f) Resale of Electricity. The Parties agree and acknowledge that Buyer is an electric utility and that the electricity purchased by Buyer from Seller under this Agreement is for the purposes of both its own internal use and for resale by Buyer operating as the Local Electric Utility. If Buyer is reasonably likely to become subject to regulation as a public service corporation, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Buyer does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring or if such restructuring cannot avoid such regulation, the Parties shall either file the appropriate filings or obtain the appropriate approvals as required to comply with such regulation, or either Party shall have the right to terminate this Agreement without further liability of either Party, and Seller shall decommission and remove the Project at its sole cost and expense in accordance with this Agreement.

(g) Seller Is Not A Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor-owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator. The Parties agree that Seller is not a “utility” as such term is used in Section 366 of the United States Bankruptcy Code or public service corporation as such term is defined in the Arizona Constitution Article 15, Section 2, and does not assume any obligations of a utility or public service company to supply Buyer, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor. Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Seller’s obligations or performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility or a public service corporation, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability of either Party, and Seller shall decommission and remove the Project at its sole cost and expense in accordance with this Agreement.

Section 8 – Permits, Ownership, Interconnection, Operation and Maintenance of Project, Liens, Mortgages

(a) Permits. Seller shall pay for and obtain all approvals from the applicable Governmental Authorities, including Buyer acting in its governmental capacity, necessary for the construction, installation, and operation of the Project, including, but not limited to, land use permits, building permits, demolition and waste disposal permits and approval. Buyer shall comply with any requirements applicable to Buyer in its proprietary capacity in connection with the agreements, permits and approvals obtained by Seller.

(b) Project Ownership. Except upon Buyer's exercise of its Purchase Option as provided in Section 9, Seller (or its assignee) shall be the legal and beneficial owner of the Project and all tax filings and reports will be filed in a manner consistent with this Agreement. The Parties agree that the Project is the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Project Site or the Premises. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Seller may make any necessary filings to disclaim the Project as a fixture in the Maricopa County Recorder's Office to place all interested parties on notice of the ownership of the Project by Seller as personal property. Such filings, or acceptable notices thereof, may be recorded by Seller, at Seller's own cost and expense.

(c) Interconnection. Seller shall be responsible for performing all studies, paying all fees, obtaining all necessary approvals, and executing all necessary agreements to arrange for the interconnection of the Project to those specifications in Exhibit I and the Interconnection Agreement. Buyer is responsible for installation and operation of any equipment on its side of the Point of Delivery necessary for acceptance and distribution of the Output.

All installations will be tied into the Local Electric Utility's distribution utility grid at the voltages indicated in Exhibit I, subject to change based on further design but consistent with standard industry medium voltage requirements. No utility sourced incentives or net metering programs are applicable under this Agreement. For the avoidance of doubt, Output from the Project will not be net metered.

(d) Standard of Operation. Seller, at its sole cost and expense, shall design, obtain permits, construct, install, operate, maintain and repair the Project so as to keep it in good condition, including good aesthetic condition, and proper working order, in compliance with all Applicable Laws and in accordance with Prudent Industry Practices. Seller shall maintain the Project's aesthetic condition in a manner consistent with the terms of this Agreement. For the avoidance of doubt, good aesthetic condition includes cleaning and removing signs of damage, deterioration, or vandalism such as material rust, patina, chipped paint, graffiti, all as may be reasonably visible by pedestrians, provided that Buyer acknowledges that Seller's obligations to refurbish the exterior coating on the Project's surfaces to maintain good aesthetic condition shall be solely pursuant to Section 8(k) below. Such work shall be at Seller's sole cost and expense. Except for emergency situations or unplanned outages, Seller shall, to the extent commercially practicable, coordinate all work on the Project with Buyer and shall otherwise cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Buyer and Buyer's tenants, and their employees, visitors, guests, students, subtenants and licensees and their customers. Seller must, and must cause its contractors to, keep the Project Site reasonably clear of debris, waste material and rubbish, and comply with all applicable safety procedures on the Project Site. Seller shall use commercially reasonable efforts to limit any damage to the Premises, Project Site, or any other property that

may at any time be located thereon, in each case, during the performance of any work by Seller or its contractors hereunder.

(e) Site Security and Maintenance. During the Operations Period, Buyer will provide security for the Premises to the extent of its normal security procedures, practices, and policies that apply to similarly situated Buyer premises and Buyer shall limit access to the secured areas of the Project Site (if applicable) to only authorized personnel of Buyer or Seller. Buyer will advise Seller promptly upon observing any damage to the Project. Upon request by Seller, such as Seller receiving data indicating irregularities or interruptions in the operation of the Project, Buyer shall as quickly as reasonably practicable make commercially reasonable efforts to observe the condition of the Project and report back to Seller on such observations. Buyer shall, at all times at no cost to Seller, maintain the Project Site and Premises in good condition and repair and in a manner sufficient to support the Project and all maintenance and repairs shall be carried out, to the extent commercially reasonable, in a manner that minimizes the impact on the Project in accordance with Section 10(a). Buyer is fully responsible for the maintenance and repair of the electrical system and equipment that receives the Output, and Buyer's failure to maintain such electrical system and/or equipment shall not excuse Buyer from its obligation to purchase the Output produced by the Project, or that would have been produced by the Project absent a failure in Buyer's electrical system and/or equipment.

(f) Emergency; Major System Maintenance.

- i. Seller may shut down the Project at any time in order to perform required emergency repairs to the Project that threaten life, property or the environment.
- ii. By January 1st of each year of the Term, if Seller has scheduled Major System Maintenance and any associated planned outages (each, a "Planned Outage") for the following calendar year, Seller shall provide Buyer with a schedule of the same. With such schedule, Seller shall also provide an estimate of (i) the reduction in Output resulting from the Major System Maintenance or Planned Outage, and (ii) the duration of the Major System Maintenance or Planned Outage.
- iii. Should Seller make any changes to Seller's projected schedule of Major System Maintenance and Planned Outages, it shall notify Buyer of such changes at least fourteen (14) days in advance of any rescheduled Major System Maintenance or Planned Outage. If the estimates previously provided in Section 8(f)(ii) have changed, Seller shall provide an estimate of (i) the reduction in Output resulting from the Planned Outage, and (ii) the estimated duration of the Planned Outage.
- iv. If an unexpected component failure, system damage, or other emergency is occurring that would require Seller to promptly perform Major System Maintenance, Seller will as soon as reasonably possible notify Buyer thereof, including the anticipated duration of such shutdown, and Buyer shall provide immediate access to the Project Site to Seller or, if immediate access is not available, access to the Project Site within 12 hours, to perform such Major System Maintenance.

- v. Seller, to the extent commercially feasible, shall avoid shutdowns during peak periods of electric generation except as may be required in accordance with Prudent Industry Practices in the event of equipment malfunction.
 - vi. Seller shall minimize to the greatest extent commercially feasible the interruption of use of any parking spaces at the Premises during the performance of any maintenance work; provided, that Seller or its contractors shall be permitted to park in designated parking spaces in order to safely perform such maintenance work.
- (g) Annual System Inspection and Maintenance. Seller shall provide for annual inspection and maintenance for the Project in accordance with Prudent Industry Practices and this Agreement. Seller shall further provide Buyer notice at least five (5) days in advance of such annual inspection and maintenance so that Buyer can witness such annual inspection and maintenance. All annual inspection and maintenance work performed for the Project is governed by applicable provisions of the Applicable Laws. All annual inspection and maintenance work performed for the Project shall be performed during business hours (Monday – Thursday, 6am to 5pm), unless otherwise agreed between the Parties. Seller agrees that the annual inspection and maintenance service shall include, but is not limited to the following:

PV Array Inspection:

- Walk through each row of the solar modules (PV array) and check for any damage such as adhesive/sealant failure. Report any damage to Solar Structure, architectural supports, and damaged modules or inverters for warranty replacement. Note location and serial number of questionable modules.
- Inspect Solar Structure (ballasted, non-penetrating mounting system) for abnormal movement.
- Use infrared camera to inspect for hot spots; bypass diode failure.
- DC Wiring Inspection - Check grounding braids for wear.
- AC Wiring Inspection - Inspection of torque marks on all electrical connections on AC side of system and make corrections as necessary.

(h) Repair of Project. During the Operations Period, Seller may repair or replace the Solar Generation Equipment in a “like for like” fashion, however, in no instance shall (i) the Project’s total peak AC capacity exceed the Project Installed Maximum Inverter Capacity allowed in Exhibit E, (ii) the Project’s total peak DC capacity exceed the Project Installed Maximum Module Capacity allowed in Exhibit E nor (iii) the Project’s Output for a particular Contract Year exceed 120% of the Expected Production of Output provided for in such Contract Year. Seller may not replace any equipment with equipment that does not materially aesthetically match the existing equipment installed as of the Commercial Operation Date. Buyer shall have the right, in its sole and absolute discretion, to accept or decline to permit any such replacement equipment that may (i) increase the capacity of the Project beyond the Project Installed Maximum Module Capacity and/or the Project Installed Maximum Inverter Capacity listed in Exhibit E or (ii) result in Output for a particular Contract Year that exceeds 120% of the Expected Production of Output provided for in such Contract Year. In any instance where the replacement of equipment (i) causes the Project Installed Module Capacity or the Project Installed Inverter Capacity to exceed the Project Installed Maximum Module Capacity or the Project Installed Maximum Inverter Capacity, respectively, or

(ii) results in Output for a particular Contract Year that exceeds 120% of the Expected Production of Output provided for in such Contract Year, Seller shall be responsible for reducing those capacities or Output, as applicable, to below those maximum limits.

(i) Liens. To the extent permitted by Applicable Law, neither Party shall directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to Buyer's interests in the Premises and Seller's interests in the Project other than a Financing Party's security interest in or ownership of the Project. Seller shall, to the extent allowed under Applicable Law, have its contractors execute lien waivers with respect to any mechanic's or materialman's lien against Buyer. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged. Buyer expressly waives any lien rights granted or conferred upon Buyer by Applicable Law (excluding any such rights related to the imposition of ad valorem or other taxes or governmental exactions) on the Project or any materials or equipment comprising the Project, and to the extent any such lien rights are nevertheless imposed upon the Project, Buyer subordinates such lien to the lien of any Financing Party, and will specifically acknowledge the rights of any Financing Party. This provision is operative without execution of any further documentation and may be relied on by any Financing Party in extending financing to Seller. Any Financing Party shall be a third-party beneficiary of this Section. Notwithstanding the preceding, in the event Seller fails to decommission and remove the Project in accordance with Section 9, in addition to other remedies available to Buyer for default as provided in this Agreement, Buyer shall have a lien against and on any materials and equipment located on the Premises for the reasonable costs of removal and storage thereof, and restoration of the Project Site, provided that such lien shall be subordinate to the lien of any Financing Party as aforesaid. Additionally, nothing in this Section applies to any liens resulting from the imposition of ad-valorem or other taxes or other governmental exactions by any Governmental Authority, including Buyer acting in its governmental capacity.

(j) Intellectual and Other Proprietary Property. Seller represents and warrants that it has coordinated with all third parties as appropriate and necessary to ensure that all patents, licensing, agreements and other intellectual property rights have been honored, considered and/or arranged to ensure that the Project can be constructed and operated in the manner contemplated without infringing upon such third party or firm's claim to patent, trademark, copyright, or other intellectual property right, including but not limited to any such claims associated with Strategic Solar Energy LLC's Power Parasol and/or PowerRoof.

(k) Maintenance of Exterior Surfaces. Seller shall provide the specifications for all the exterior coating materials that will be applied to the Project along with the expected lifetime of each such exterior coating material (concurrent with Seller's submittal of engineering design drawings) for Buyer's approval, not to be unreasonably withheld, conditioned or delayed. The

final approved specifications shall be incorporated into this Agreement as Exhibit N. At Buyer's request, if the exterior surface on at least thirty-three percent (33%) of the Project is in violation of the exterior coating material's manufacturer's warranty, Seller will, at no additional cost to Buyer, refurbish the Project's surfaces on Seller's next scheduled visit to the Project Site. Seller shall be permitted to store extra coating materials at the Project Site at no cost to Seller.

(l) Inspection and Maintenance Site Access. The Parties agree that the Premises are an important architectural and aesthetic space and that the Project will be an integral part of that space. The Parties acknowledge that, as such, there will be periods when access to the Project may be limited. The Parties will work in good faith and to the greatest extent commercially feasible to coordinate access to the Project so as not to interfere with the parking, operations and events on the Premises.

(m) Buyer Use of Project. Notwithstanding the Project's primary purpose as an electrical generator, the Parties acknowledge and agree that Buyer's use of the Premises may include the Buyer or Buyer's vendors or contractors attaching lighting, advertising, sound equipment, signage, displays, or other equipment (the "Attachments") associated with the use of the Premises for Buyer's events or other business or public functions, provided that Buyer acknowledges and agrees that any such Attachments shall be subject in all respects to the following conditions:

a. Prior to the Commercial Operation Date, Seller shall submit to Buyer an Attachment Manual which shall include (i) specific and designated areas of the Project where Buyer's vendors or contractors may temporarily install or secure the Attachments, (ii) technical limitations and requirements associated with the installation or removal of Attachments to the Project, (iii) structural documentation with respect to the Project, (iv) weight limits on Attachments to the Project, and (v) other materials as Seller deems reasonably necessary or applicable. Within ten (10) Business Days of receipt of the Attachment Manual, Buyer shall review and provide comments, if applicable, to Seller. Seller may, in its reasonable discretion, incorporate such Seller comments and submit a revised Attachment Manual to Buyer, provided that nothing herein shall require Seller to incorporate any comments that Seller believes may, in its reasonable discretion, (i) harm, damage, alter or otherwise negatively impact the System or the Output (including, but not limited to, by limiting solar insolation), (ii) alter Seller's rights herein, or (iii) result in greater than de-minimis increased costs or expenses associated with Seller's performance of its obligations hereunder (including, but not limited to, Seller's obligations with respect to the operation and maintenance of the System);

b. No Attachments shall be installed or secured to the Project for a continuous period longer than ten (10) days unless identified as Permanent Attachments to the Project in Exhibit E;

c. Buyer shall provide notice to Seller at least fifteen (15) days prior to any event involving the use of Attachments, and Seller shall have the right to observe and inspect the installation and removal of any Attachment to the Project;

d. Buyer shall ensure that any Person installing, securing or removing any Attachment to the Project shall be qualified to perform such work in accordance with Prudent Industry Practices;

e. Notwithstanding the provisions set forth in Section 12(f), Buyer shall be responsible to Seller for all reasonable costs and expenses of restoration, repair or

replacement (including with respect to the aesthetic condition) of the Project to the extent caused by an Attachment;

f. Seller shall not be found in breach of any material term or obligation under this Agreement nor shall a Seller Event of Default be found to be occurring if such breach or event giving rise to the default is caused by an Attachment, provided that Seller shall remain obligated to cure such breach or event of default (subject to clause (e) above).

(n) Breakdown Notice. Each Party shall promptly notify the other following such Party's discovery of (i) any material malfunction in the operation of the Project or (ii) an interruption in the supply of Output from the Project. Each Party shall notify the other as soon as reasonably possible upon the discovery of any emergency condition affecting any part of the Project and/or Project Site.

Section 9 – Purchase Option and Removal at End of Term

(a) Early Purchase Options. On the sixth (6th), tenth (10th), fifteenth (15th), and twentieth (20th) anniversary of the Commercial Operation Date, and at the expiration of the Operations Period, provided no Buyer Event of Default is occurring, Buyer shall have the option to purchase the Project from Seller (the "Purchase Option") for the greater of (i) the Fair Market Value of the Project on such date and (ii) the applicable Early Termination Amount for the current Contract Year (the "Purchase Price"). If Buyer desires to initiate the potential exercise of its Purchase Option, it shall, no later than one hundred eighty (180) days prior to the applicable anniversary date, notify Seller of its request for a determination of Fair Market Value and potential election to exercise its Purchase Option.

(b) Determination of Fair Market Value. Seller shall determine Fair Market Value within thirty (30) days after Buyer has provided notice to Seller of its potential exercise of the Purchase Option in accordance with Section 9(a). Seller shall give written notice to Buyer of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Buyer objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a mutually acceptable nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the Project. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Project based on the formulation set forth in the definition of "Fair Market Value" and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error, but the valuation shall in no way obligate the Buyer to exercise the Purchase Option. The costs of the appraisal shall be borne by Buyer.

(c) Transfer of Ownership. If after review of the Fair Market Value Buyer wishes to exercise its Purchase Option, within ninety (90) days of providing notice of same to Seller, Buyer shall pay the Purchase Price to Seller by electronic transfer in immediately available funds to an account designated by Seller or on any other payment schedule as mutually agreed upon by the Parties at that time. Thereafter, Buyer shall assume complete responsibility for the operation and maintenance of the Project and liability for the performance of the Project, and Seller shall have

no further liabilities or obligations hereunder except as provided in Sections 9(d) and 25(p). Notwithstanding anything to the contrary in this Agreement, if Buyer completes the purchase of the Project, Buyer shall be entitled to any Tax Attributes to the extent arising out of or resulting from the purchased Project after the date of such purchase.

(d) Project Transfer Terms. Upon Buyer's notice that it elects to exercise its Purchase Option set forth in this Section above, Seller shall prepare and deliver to Buyer a set of records on the operation and maintenance history of the Project, including a summary of known defects and all applicable design drawings, operation and maintenance manuals/procedures, material specification sheets, manufacturer's warranty records, and any other records pertaining to the Project's construction, design, manufacturer's warranty(ies), operation and maintenance. In addition, Seller shall provide a quote for the annual operations and maintenance of the Project following the sale of the Project. Upon payment of the purchase price, Seller shall deliver, or cause to be delivered, to Buyer a bill of sale conveying the Project "AS-IS" to Buyer. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Seller. Seller shall use commercially reasonable efforts to transfer any remaining manufacturer's warranties on the Project, or portions thereof, to Buyer.

(e) Decommissioning. If Buyer does not exercise its Purchase Option set forth in this Section above, then Seller, within one hundred eighty (180) days after the expiration or earlier termination of this Agreement ("Decommissioning Period"), at its sole cost and expense (except in the instance of a Buyer Event of Default, which shall be at Buyer's cost and expense), shall decommission and remove the Project from the Project Site and the Premises, and otherwise substantially restore the Project Site and Premises to its original condition, ordinary wear and tear excepted. Seller shall coordinate with Buyer to ensure that once decommissioning work begins, Seller causes no period longer than ten (10) consecutive Business Days during the Decommissioning Period where decommissioning work is not performed without Buyer's prior written consent, but in no instance shall the Decommissioning Period exceed one hundred eighty (180) days. If Decommissioning Period exceeds a total of one hundred eighty (180) days, the Parties agree that it would be impractical or extremely difficult, if not impossible, to ascertain with any degree of certainty the amount of damages that Buyer would suffer and therefore the Parties agree that a reasonable estimate of such damages under the circumstances is four hundred ten dollars (\$410.00) per day up to a maximum total of one-hundred fifty thousand dollars (\$150,000.00) which Seller shall pay to Buyer as liquidated damages and not as a penalty. In accordance with the Site License, Seller and its representatives shall have reasonable vehicular and pedestrian access to the Premises during the Decommissioning Period for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Seller shall to the greatest extent commercially feasible minimize any disruption to activities occurring on the Premises. Buyer will provide Seller adequate storage space on the Premises or other Buyer-owned property within ¼ mile of the Premises for materials and tools used during the Decommissioning Period. Seller shall be responsible for providing shelter and security for stored items during decommissioning and removal. During decommissioning, Seller will comply with all Applicable Laws.

Section 10 – Shutdowns, Relocation; Alterations; Closure or Sale of Site

(a) Buyer Requested Shutdown. Buyer from time to time may request Seller to temporarily stop operation of the Project (a “Buyer Requested Shutdown”), which shutdown shall be performed by Seller or its contractors at Buyer’s cost. During any such Buyer Requested Shutdown (but not including periods of Force Majeure Event) that is longer in duration, cumulatively, than twenty-four (24) production hours in any 365 day period, Buyer will pay Seller an amount equal to the sum of payments that Buyer would have made to Seller hereunder for Output that would have been produced by the Project during the period of the shutdown. Determination of the amount of Output that would have been produced during the period of the shutdown shall be based, during the first Contract Year, on estimated levels of production and, after the first Contract Year, on the actual operation of the Project during the same period in the previous Contract Year, unless Seller and Buyer mutually agree to an alternative methodology. In addition, the Output of the Project shall be estimated by Seller for the period during which the Project is not in operation and such estimated Output shall be added to actual Output for the affected Contract Year(s) for the purpose of determining whether the Minimum Production Limit has been satisfied.

The rights in this Section are in addition to those set forth for Buyer as the Local Electric Utility under the Interconnection Agreement to open the disconnect switch with regard to the Project as more particularly set forth in Exhibit B to the Interconnection Agreement. For the avoidance of doubt, Buyer will not be responsible for the purchase of any Output that would have been generated during the period in which the Project is disconnected pursuant to a permitted shutdown under the Interconnection Agreement.

(b) Seller Safety Shutdown. In addition to the right of Seller to shut down the Project for maintenance as provided in Section 8, Seller may shut down the Project if Seller, in the exercise of reasonable judgment, believes conditions outside Seller’s control may interfere with the safe operation of the Project. Seller shall give Buyer notice of a shutdown immediately upon becoming aware of such conditions. Seller and Buyer shall cooperate and coordinate their respective efforts to restore conditions so as to not interfere with the safe operation of the Project and to reduce, to the extent commercially reasonable, the duration of the shutdown and any impacts on the Premises. Notwithstanding the preceding, there shall be no payment for any Output that would have been produced if the safety shutdown is caused by a Force Majeure Event or is due to the malfunction of Seller’s equipment or other conditions that are within the reasonable control of Seller.

(c) Project Relocation. Buyer may request to move the Project (or portions thereof) to another site owned by Buyer, but any such relocation shall be subject to the approval of Seller and Financing Party, not to be unreasonably withheld, and shall be performed by Seller or its contractors at Buyer’s cost. In connection with such relocation, Buyer shall execute an amendment to this Agreement reflecting (i) the new location of the Project, (ii) a revised Site License for the new location; (iii) a revised Rate, if the substitute premises has inferior access to sunlight as compared to the original Project Site and Premises; (iv) revised Project details, description and specifications; (v) revised Minimum Production Limit values based on the re-installed Project (or portion thereof); and (vi) such other terms that reasonably require modification as a result of the relocation, but otherwise continuing all the terms and conditions of this Agreement for the remaining Term. Buyer shall also provide any consents or releases required by Seller in connection with the new location. Buyer shall pay all costs associated with the removal and relocation of the Project (or portion thereof), including all design, engineering,

procurement, installation, real estate diligence, testing and interconnection costs. In addition, during the Relocation Event, Buyer will pay Seller an amount equal to the sum of (i) payments that Buyer would have made to Seller hereunder for Output that would have been produced by the Project during the Relocation Event; and (ii) an amount to compensate Seller for any lost (or recaptured) Tax Attributes (and associated penalties) that Seller would have received with respect to the Project and associated with the Relocation Event. Determination of the amount of Output that would have been produced during the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the Project in the same period in the previous Contract Year, unless Seller and Buyer mutually agree to an alternative methodology. Such estimated Output shall also be added to actual Output for the affected Contract Year(s) for the purpose of determining whether the Minimum Production Limit has been satisfied in such Contract Year(s).

(d) No Alterations. Buyer shall not make any alterations to the Project Site and/or Premises which adversely affect the operation and maintenance of the Project without Seller's prior written consent, such consent not to be unreasonably withheld. To the extent that temporary disconnection or removal of the Project is necessary to perform alterations or repairs, such disconnection, removal and reinstallation of the Project after completion of Buyer's alterations and repairs, shall be done by Seller or its contractors at Buyer's cost. In addition, Buyer shall pay Seller for the Output that would have been produced by the Project during the alteration or repair period in accordance with Section 10(a) above. If Buyer requires the shutdown of the Project in order to perform such alternations or repairs to the Project Site and/or Premises, the Output of the Project shall be estimated by Seller for the period during which the Project is not in operation due to such shutdown and such estimated Output shall be added to actual Output for the affected Contract Year(s) for the purpose of determining whether the Minimum Production Limit has been satisfied in such Contract Year(s). For the avoidance of doubt, Buyer, in its capacity as the local authority having jurisdiction with regards to permitting and zoning approval, approving or authorizing construction of buildings or structures that interfere with the operation or maintenance of the project shall not be considered an alteration.

(e) Sale of Project Site. In the event Buyer transfers by sale all or a portion of its interest in the Project Site, Buyer shall remain liable to Seller for the performance of the obligations of Buyer hereunder notwithstanding such transfer, (including, for the avoidance of doubt, payment for all Output produced by the Project and the Early Termination Amount), unless approved in advance in writing by Seller, such approval not to be unreasonably withheld.

Section 11 – Taxes

(a) Income Taxes. Seller shall be responsible for any and all income taxes imposed by any Governmental Authority and associated with payments from Buyer to Seller for Output from the Project. Seller (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Buyer shall be responsible for taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of

Output by Seller to Buyer, if any. Buyer shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Seller for any such taxes assessed against and paid by Seller.

(c) Property Taxes. Seller shall be responsible for all ad valorem or other real or personal property taxes or impositions levied or assessed against the Project and for any added assessment against the Premises as a result of the existence of the Project, unless Buyer has exercised its Purchase Option under this Agreement. If Buyer is assessed any taxes related to the existence of the Project on the Premises, Buyer shall immediately notify Seller, and Seller shall reimburse Buyer for the amount of same.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Payment of Delinquent Taxes. In the event either Party fails to pay any taxes not being contested pursuant to Section 11(d) above, and for which it is liable hereunder that may become a lien upon the other Party's property, such Party may pay such amounts necessary to release the lien and thereafter be entitled to recover such amounts from the other Party, together with interest thereon equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed under Applicable Law.

(f) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within thirty (30) days of receiving an invoice therefor from the Party who paid the taxes.

Section 12 – Insurance and Risk of Loss

(a) Liability. Seller shall be responsible for all liability arising out of, resulting from or relating to the Project and its ownership, operation and maintenance.

(b) Insurance. Upon the Effective Date, Seller shall pay for and maintain insurance policies in full force and effect throughout the Term, covering its ownership, operation and maintenance of the Project, as follows:

- i. Coverage. Seller will comply with the scope and coverage of the Insurance Requirements as described on Exhibit F attached hereto. In conjunction with its Notice of Intent to Proceed, Seller shall deliver to Buyer evidence that Seller has obtained and continues to hold the policies of insurance required under Exhibit F.
- ii. Upon Buyer's written request, Seller shall deliver certificates of insurance evidencing renewals of expiring policies.

- iii. To the extent available at commercially reasonable terms, Seller's insurance shall include Completed Operations and Contractual Liability coverage and shall specifically refer to this Agreement and specifically cover the liability assumed by Seller under this Agreement.
- iv. All policies shall be written to provide that they may not be canceled, lapse, expire, or be materially altered except with thirty (30) days (ten (10) days with respect to non-payment of premium) prior written notice to Buyer.
- v. Seller may self-insure deductible amounts under the policies in amounts not greater than those set out in Exhibit F. Seller may not self-insure any amounts other than the specified and allowable deductibles.
- vi. Prior to the commencement of construction of the Project, Seller shall additionally cause any contractor of Seller performing work on the Project Site to obtain and to maintain, throughout the time it performs such work, insurance as set out in Exhibit F with limits appropriate to the sublet work and potential perils, and shall provide proof thereof to Buyer within three (3) Business Days of any request for proof of coverage.

Buyer retains the right, from time to time, but not more frequently than once every three (3) years, to request a reasonable increase in the amount of the Insurance Requirements if and to the extent such increase is due to an increase in exposure resulting from the installation of the Project on the Premises (as reasonably substantiated by Buyer). Buyer will provide not less than ninety (90) days' notice to Seller of any such increase to the Insurance Requirements. Upon receipt of such notice, Seller shall consider the requested increase in insurance coverage in good faith. If the requested increase in insurance coverage requires an increase in Seller's then current premium, Seller may look to Buyer for reimbursement thereof.

- viii. Certain Insurance Provisions and Requirements. Seller's insurance policy shall be written on an occurrence basis and shall include the Buyer, as an additional insured party and loss payee for all property damage to the Project as well as the Project Site and Premises as a result of the Project. **For the avoidance of doubt, Seller must insure the Project on behalf of the Parties against all property damage to the Project, including damage resulting from the negligent acts or omissions of Buyer.** A cross liability clause shall be made part of the policy. Seller's insurer shall waive all rights of subrogation against Buyer. Seller's insurance shall provide primary coverage in all cases. **For the further avoidance of doubt, Seller's insurance obligations pertain to the Project only and the Parties acknowledge and agree that Seller shall not be responsible for providing insurance coverage in respect of the Project Site or Premises, which insurance shall be the responsibility of, and maintained by, Buyer.**
- ix. Insurance Carrier Ratings. All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in

the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

- (c) Project Loss. Seller shall bear the risk of any damage, destruction, or other physical loss to the Project ("Project Loss") as follows:
- i. Partial Project Loss. In the event of any Project Loss that results in less than total damage, destruction or loss of the Project, this Agreement will remain in full force and effect and Seller will, at Seller's sole cost and expense, subject to the provisions below, repair or replace the Project as quickly as practicable. Seller shall thereafter be entitled to any insurance proceeds for the partial Project Loss, and to pursue any third-party recoveries (consistent with applicable insurance as required under this Section). Notwithstanding the preceding, if a partial Project Loss to more than fifty percent (50%) of the Project occurs during the last five (5) years of the Term, or any Project Loss occurs during the last year of the Term, Seller shall not be required to restore the Project, but may instead terminate this Agreement, and neither Seller nor Buyer shall have any further obligations to the other under this Agreement, except that Seller shall be responsible to decommission and remove the Project under Section 9, and Buyer shall be responsible for amounts accrued but unpaid for Output actually delivered prior to the partial Project Loss of the Project.
 - ii. Total Project Loss. In the event of any Project Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the Project (hereafter "Total Project Loss"), Seller shall, within sixty (60) Business Days following the occurrence of such Total Project Loss, notify Buyer whether Seller is willing, notwithstanding such Total Project Loss, to restore the Project. If Seller notifies Buyer in writing that Seller is not willing to restore the Project following a Total Project Loss, this Agreement will terminate automatically upon the effectiveness of such notice without further liability of either Party, except that Seller shall within a reasonable time decommission and remove the Project from the Premises in accordance with Section 9 and Buyer shall be responsible for amounts accrued but unpaid for Output actually delivered prior to the total Project Loss of the Project. Seller shall be entitled to any insurance proceeds for the total Project Loss, and to pursue any third-party recoveries (consistent with applicable insurance as required under this Section). If Seller notifies Buyer that Seller desires to restore the Project following a Total Project Loss, the following shall occur, (A) this Agreement will remain in full force and effect during which the performance of the Parties obligations regarding the production and delivery of Output (and associated Environmental Attributes) and payment therefor shall be excused during such restoration period, and (B) Seller will repair or replace the Project as quickly as practicable, but in all cases within a period of eighteen (18) months from the date of Seller's notice of its intent to restore, such eighteen month period as may be extended on a day for day basis as a result of a Buyer Delay, delay caused by the Local Electric Utility or a Force Majeure Event. In the event that the Project is not timely fully restored with such eighteen (18) month period (as may be extended), Buyer may terminate this Agreement by giving written notice thereof to Seller, who shall thereafter decommission and remove

the Project from the Premises in accordance with Section 9, after which neither Party shall have any further obligations to the other except that Buyer shall be responsible for amounts accrued but unpaid for any Output actually delivered prior to the effective date of termination.

(d) Buyer Negligence and Output. In the event Buyer's contractors', agents', or employees' negligent acts or omissions contribute to (i) a partial Project Loss, Buyer shall be responsible for payment of Rates for Output until Seller, exercising reasonable diligence, is able to restore the Project (a "Loss Period") in the amount equal to Buyer's proportional liability multiplied by the sum of the Rate payments that Buyer would have made to Seller hereunder for Output that would have been produced by the Project absent such partial Project Loss during such Loss Period or (ii) a Total Project Loss, Buyer shall be responsible for an amount equal to Buyer's proportional liability multiplied by the applicable Early Termination Amount for the Contract Year in which the total Project Loss occurs for the Project. Determination of the amount of Output that would have been produced during a Loss Period shall be based, during the first Contract Year, on estimated levels of production and, after the first Contract Year, based on the actual operation of the Project during the same period in the previous Contract Year, unless Seller and Buyer mutually agree to an alternative methodology. In each case, any amount owed by Buyer to Seller pursuant to this Section 12(d) shall be reduced by the amount of all third-party recoveries and any other applicable insurance proceeds with respect to such Project Loss (but in all cases the Project must be insured for property damage on behalf of both Parties in accordance with Section 12(b)). In addition, the estimated Output during a Loss Period shall be added to actual Output for the affected Contract Year(s) for the purpose of determining whether the Minimum Production Limit has been satisfied.

(e) In the event of any Project Loss, regardless of cause, Seller shall be entitled to any insurance proceeds for the Project Loss, and to pursue any third-party recoveries (consistent with applicable insurance as required under this Section), but otherwise assumes all risks associated with such loss, including but not limited to, loss in payment of Rates for Output and loss of Tax Attributes, subject to the provisions of Section 12(d).

(f) For the avoidance of doubt, Buyer shall not be responsible for the costs or expenses of restoration, repair or replacement of the Project or otherwise based on property damage regardless of who caused the damage or how the damage occurred, and Seller agrees to look solely to the insurance proceeds as available and required to be maintained by Seller in accordance with this Agreement for recovery of any property damage losses to the Project.

Section 13 – Cooperation; Access to Light; Site Improvements

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term reasonably cooperate with the other Party and provide all commercially reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Access to Light (Insolation). Buyer, in its capacity as owner of the Premises hereby grants to Seller the exclusive right to receive, convert and transmit solar energy on the Project Site during

every hour of each day that sunlight can be received by the Project. Buyer, on the Premises, shall not restrict or interfere or permit the restriction or interference with access to direct sunlight by the Project, and if Buyer becomes aware of any activity or condition that could diminish the Project's access to sunlight, Buyer shall promptly notify Seller and shall reasonably cooperate with Seller in preserving the Project's existing insolation levels. This provision shall not apply to any obstruction reasonably discoverable during the Seller's Initial Period inspection. Additionally, Seller warrants that those features in Exhibit C and Exhibit E which Buyer feels cannot be altered or removed and which may have an effect of obstructing solar insolation have been accounted for in the Rate and Output calculations inherent to this Agreement. In the event Buyer breaches its obligations under this Section 13(b) in respect of insolation, Buyer shall pay to Seller an amount equal to the sum of payments that Buyer would have made to Seller hereunder for Output that would have been produced by the Project but for such breach. Notwithstanding the foregoing, the provisions of this Section are applicable to Buyer in its limited capacity as owner of the Project Site and not in its governmental capacity and nothing herein shall be interpreted as restricting Buyer from exercising its governmental functions.

Section 14 – Press Releases and Confidentiality

(a) Press Releases. The Parties acknowledge that they each may desire to publicize information about this Agreement and the Project. The Parties therefore agree that each may release certain information from time to time, about entering into this Agreement, the size and location of the Project, and the identity of the other Party, after first obtaining the prior written consent of the other Party (except in the case of filings or other statements or releases as may be required by Applicable Law). Either Party may rescind its consent to the continued and future release of such information by providing written notice of such rescission to the other. Notwithstanding the foregoing, Seller may, without Buyer's consent, issue promotional or advertising materials regarding the Project that do not identify Buyer. Buyer has the exclusive right to claim the Environmental Attributes, associated reductions in emissions of pollution and greenhouse gases resulting from the generation of Output and Buyer is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing and has exclusive right to claim all Environmental Attributes from the Project. Seller shall not report to any Person or entity that the Environmental Attributes granted hereunder to Buyer belong to anyone other than Buyer. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Tax Attributes, and any related reporting rights. However, information about the Project other than that described above may constitute Confidential Information, subject to the limitations of Buyer as a municipal corporation in the state of Arizona under the Arizona Public Records Law, as set forth below.

(b) Limits on Disclosure of Confidential Information. Each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other Person other than its Affiliates, and its and its Affiliates' officers, directors, members, managers, employees, agents, contractors, consultants, lenders, potential lenders, counsel to a Party or its lenders or potential lenders, and potential assignees, in each case where such disclosure is reasonably necessary and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, the Parties may, and shall, disclose any information

required to be disclosed, including Confidential Information, under Applicable Law (including, for the absence of doubt, under rules, regulations and any contract implementing the Tax Attributes required to be disclosed by any Governmental Authority). In the event that the receiving Party receives a request for Confidential Information (whether by court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof, or any other request) the receiving Party shall make commercially reasonable efforts (to the extent legally permissible) to (i) provide the disclosing Party with prompt written notice of any such request or requirement so that the disclosing Party may at its cost and expense seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement; and (ii) reasonably cooperate with the disclosing Party to obtain such protective order or other remedy. Nothing herein shall require a receiving Party to expend funds to prevent or limit the disclosure of Confidential Information. In the event such protective order or other remedy is not obtained or the disclosing Party waives compliance with the relevant provisions of this Agreement, the receiving Party agrees to (a) furnish only that portion of the Confidential Information for which the disclosing Party has waived compliance with the relevant provisions of this Agreement, or which the receiving Party is legally required to disclose and (b) give the disclosing Party such prior written notice of the Confidential Information to be disclosed as is reasonably practicable.

(c) Permissible Disclosures. Seller acknowledges that this Agreement is a public record under the Arizona Public Records Law and is not subject to any exceptions regarding disclosure thereunder. Seller may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Seller in connection with the Project.

(d) Enforcement of Confidentiality Provisions. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 14 and agrees that the provisions of this Section 14 may be required to be specifically performed and each Party shall have the right to seek preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 14 without the necessity of proving actual damages or posting any bond or other security, which shall be the sole and exclusive remedy under this Section 14. The provisions of this Section 14 shall survive until three (3) years after the effective date of any termination of this Agreement.

(e) Public Records. Notwithstanding anything in this Agreement to the contrary, Seller acknowledges that Buyer is a municipal corporation and political subdivision of the State of Arizona, subject to Arizona's Public Records Laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process. Notwithstanding the foregoing, prior to such disclosure by Buyer, Buyer will endeavor to give Seller written notice of such potential disclosure so that Seller may, at Seller's sole cost and expense, attempt to withhold certain of its proprietary information, as may be permitted under Arizona's Public Records Laws, to prevent competitive harm to Seller.

Section 15 – Indemnification

- (a) Seller Indemnification.
- a. General. To the extent permitted by Applicable Law, Seller shall indemnify, defend, and hold harmless Buyer, its elected officials, officers, agents, representatives and employees (collectively, including Buyer, "Buyer Personnel") from and against any and all Losses imposed upon or asserted against Buyer Personnel by a third party relating to, arising out of or resulting from: (1) services or materials provided under this Agreement by Seller or its officers, agents, contractors or employees (collectively, including Seller, "Seller Personnel"); (2) any claim for or arising out of any personal injury or death or loss or damage to property to the extent arising out of the negligent acts or willful misconduct of Seller Personnel in the performance of this Agreement; or (3) any claim relating to Seller's breach of a material term of this Agreement. Seller's indemnification, duty to defend and hold harmless Buyer Personnel in this Subsection will not apply to Losses to the extent arising from the negligence or willful misconduct of Buyer Personnel.
 - b. Intellectual Property. Seller agrees to indemnify, defend and hold Buyer harmless from any Losses based on, arising out of, or related to violation or infringement of any intellectual and other proprietary rights, including but not limited to patents, trademarks, copyright, trade secrets, or other intellectual property rights of any third party associated with any design, features, functions or technology used by or in the Project.
 - c. Hazardous Materials. Seller agrees to indemnify, defend and hold Buyer harmless from any Losses, including but not limited to contribution claims and cost recovery, based on, arising out of, or related to, or directly or indirectly arising out of the use, generation, storage, disposal, or transportation of Hazardous Materials at, on, above, under or about the Project Site and/or Premises by Seller.
 - d. (b) Buyer Indemnification. To the extent permitted by Applicable Law, Buyer shall indemnify, defend and hold Seller Personnel harmless from and against all Losses imposed upon or asserted against Seller Personnel by a third party relating to, arising out of, or resulting from (i) any claim relating to Buyer's breach of a material term of this Agreement; (ii) the existence at, on, above, under or about the Project Site and/or Premises of any Hazardous Materials, except to the extent used, generated, stored, disposed or transported by Seller and (iii) any claim for or arising out of any personal injury or death or loss or damage to property to the extent arising out of the negligent acts or willful misconduct of Buyer Personnel in the performance of this Agreement. Buyer's indemnification, duty to defend and hold harmless Seller Personnel in this Subsection will not apply to Losses to the extent arising from the negligence or willful misconduct of Seller Personnel.
- (c) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement for one (1) year.

Section 16 – Warranties

- (a) Mutual Representations. Each Party hereby represents and warrants to the other, as of the Effective Date hereof, that:

- i. Legal Power. Each Party has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part.
- ii. No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement shall not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; or (3) any Applicable Law.
- iii. Enforceability. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.
- iv. No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity (including bankruptcy proceedings) by or before any Governmental Authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.
- v. Insolvency. Each Party is not insolvent and there are no proceedings pending or being contemplated by it or any of its Affiliates, or, to its knowledge, threatened against it or its Affiliates which would result in it being or becoming insolvent and/or bankrupt.

(b) Buyer Representations. In addition to the representations and warranties in Section 16(a), Buyer hereby represents and warrants to Seller, as of date hereof, that:

- i. Buyer is a municipal corporation and Local Electric Utility, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement.
- ii. Buyer represents, warrants, and covenants that it is the fee owner of and has good, lawful and marketable title to the Premises and the Project Site free of any material defects, liens, encumbrances, restrictions or covenants which may impact Seller's proposed use of the Project Site. Notwithstanding the preceding, Seller may conduct its own due diligence regarding the Premises and Project Site.
- iii. Buyer, as the Local Electric Utility, is not a public service corporation as defined in the Arizona Constitution, Article 15, Section 2, and this Agreement is not subject to approval by the Arizona Corporation Commission with respect to Buyer.

(c) Seller Representations. In addition to the representations and warranties in Section 16(a), Seller hereby represents and warrants to Buyer, as of the date hereof, that:

- i. Seller is duly organized, validly existing in good standing under the laws of the jurisdiction of its formation and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in Arizona and each jurisdiction wherein the nature of the business transacted by it makes such qualifications necessary.
- ii. Seller will conduct its own due diligence as to the viability of the Project, the Project Site, the Tax Attributes, and all other material matters and concerns with respect to the Project, in all cases subject to the provisions of this Agreement including but not limited to the provisions of Section 4 herein.

Section 17 – Force Majeure

(a) Excuse for Force Majeure Event. Except as otherwise specifically provided in this Agreement (including Section 17(b)), neither Party shall be considered in breach of this Agreement or otherwise liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to respond to such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Obligations to make payments for Output already provided and which accrued prior to the Force Majeure Event shall not be excused by a Force Majeure Event.

(c) Restoration of the Premises and Project Site. In the event of a Force Majeure Event which destroys all or a substantial portion of the Premises, Buyer shall elect, within ninety (90) days of such Force Majeure Event, whether it will restore the Premises, which restoration will be at the sole cost and expense of Buyer. If Buyer does not elect to restore the Premises, then Seller shall not restore the Project and this Agreement will terminate. If Buyer does elect to restore the Premises, Buyer shall provide notice of such election to Seller and Seller shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Seller does not elect to restore the Project, Seller shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Seller does elect to restore the Project, it shall do so at its sole cost and expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement and accruing prior to the Force Majeure Event; and (ii) the confidentiality provisions of Section 14 and the indemnity obligations of Section 15 hereof shall continue to apply

for the respective time periods set forth therein notwithstanding the termination of this Agreement.

(c) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event extends beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days' notice to the other. Upon such termination, Seller shall be required to decommission and remove the Project in accordance with the provisions of Section 9 unless a Force Majeure Event has resulted in the destruction of all or a substantial portion of the Premises, in which case the provisions of clause (c) above shall apply to the removal of the Project. In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement for the respective time periods set forth therein.

Section 18 – Change in Law

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of Output produced by the Project, or any other material obligation of the Seller hereunder, and compliance with the Change in Law results in a material increase in Seller's costs to operate and/or maintain the Project, Seller will promptly submit to Buyer a written notice setting forth (i) the applicable Change in Law; (ii) the specific manner in which such Change in Law increases Seller's costs and commercially reasonable documentation supporting the amounts of such change; and (iii) Seller's proposed adjustment to the then applicable and future Rates for Output under this Agreement to reflect such increases in costs. The Parties shall within thirty (30) days following receipt by Buyer from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate such changes in the Rates or other amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable in good faith to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment for generation of Output and associated amounts accrued prior to termination. If Seller chooses to terminate this Agreement, Buyer will have the option, subject to approval of Seller's Financing Party, which is not to be unreasonably withheld, to purchase the Project from Seller for a purchase price equal to the Fair Market Value of the Project at the time of termination. If Buyer provides notice to purchase the Project and Seller's Financing Party refuses the sale of the Project to Buyer, Seller shall decommission and remove the Project in accordance with Section 9 of this Agreement.

Section 19 – Seller Default and Buyer Remedies

(a) Seller Events of Default. Seller shall be in default of this Agreement if any of the following (each, a "Seller Event of Default") occurs:

- i. Misrepresentation. Any representation or warranty by Seller under Section 16 hereof, is incorrect or incomplete in any material way at the time made, or Seller omits to include any information actually known to Seller and reasonably necessary to make a representation or warranty under Section 16 not materially

misleading at the time made, and such defect is not cured within fifteen (15) days after receipt of notice from Buyer identifying the defect.

- ii. Reserved.
- iii. Obligation Failure. Seller fails to perform any obligation hereunder and such failure is: (i) material, (ii) not excused by the provisions of Section 17 (relating to Force Majeure Events), and (iii) not cured within: (A) five (5) days if the failure could affect the public health, safety and/or welfare; (B) ten (10) days if the failure involves a failure to make payment when accrued and outstanding or failure to maintain insurance as required in Section 12 and Exhibit F; or (C) thirty (30) days if the failure involves any other obligation hereunder, in each case, after receipt of notice from Buyer identifying the failure; provided, however, that the cure period with respect to failures under clauses (A) and (C) shall be extended for an additional reasonable time as may be necessary (but not beyond an aggregate cure period of fifteen (15) days for clause (A) and ninety (90) days for clause (C)) to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.
- iv. Insolvency. Seller (i) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (ii) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (iii) makes a general assignment for the benefit of its creditors; (iv) commences a voluntary case under any bankruptcy law; (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) acquiesces in, or fails to contest in a timely manner, any petition filed against Seller in an involuntary case under bankruptcy law or seeking to dissolve Seller under other Applicable Law; or (vii) takes any action authorizing its dissolution.
- v. Merger Event. Seller merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement.
- vi. Intellectual Property Infringement. A Seller Event of Default under this Subsection occurs when Seller fails to properly secure patent, trademark, or other intellectual or proprietary property rights associated with any design or technology used in the Project and such failure is not cured within thirty (30) days following receipt of written notice thereof from Buyer demanding such cure.
- vii. Violation of Interconnection Agreement. Seller, upon notice by Buyer, fails to correct any violation of the Interconnection Agreement within ten (10) days; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun

curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(b) Buyer Remedies. Upon a Seller Event of Default, provided that Buyer complies with its obligations under Section 21 and Financing Party does not cure such Seller Event of Default, Buyer may terminate this Agreement and pursue all other remedies available to Buyer at law or in equity. Buyer shall take all commercially reasonable efforts to mitigate its damages as the result of a Seller Event of Default. The Parties agree that for the purposes of calculating damages, Buyer's losses in the event of termination of this Agreement due to a Seller Event of Default shall be valued, subject to Buyer's mitigation efforts, at a minimum of one cent per kilowatt hour (\$0.01/kWh) multiplied by the Expected Production of Output of the Project over the Term remaining at the time of the Seller Event of Default as shown in Exhibit E, provided that Seller's liability to Buyer for such Seller Event of Default shall in no event exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) (this limitation shall not apply to any Seller indemnification obligations under Section 15 or insurance or risk of loss obligations under Section 12).

Section 20 – Buyer Default and Seller Remedies

- (a) Buyer Events of Default. Buyer shall be in default of this Agreement if any of the following (each, a "Buyer Event of Default") occurs:
- i. Misrepresentation. Any representation or warranty by Buyer under Section 16 hereof, is incorrect or incomplete in any material way at the time made, or Buyer omits to include any information actually known to Buyer and reasonably necessary to make a representation or warranty under Section 16 not materially misleading at the time made, and such defect is not cured within fifteen (15) days after receipt of notice from Seller identifying the defect.
 - ii. Obstruction. Buyer (i) knowingly and intentionally obstructs commencement of construction and installation of the Project, (ii) fails to take any commercially reasonable actions in its proprietary capacity that are necessary for the interconnection of the Project, or (iii) fails to take the Output produced by the Project, and fails to correct any such action (or inaction) within ten (10) days of receipt of notice thereof from Seller. Such Buyer Event of Default shall not excuse Buyer's obligations to make payments previously accrued and that otherwise would have been due under this Agreement.
 - iii. Payment Failure. Buyer fails to pay any accrued and outstanding amount due and payable hereunder, other than an amount that is subject to a good faith dispute pursuant to Section 6(e), within ten (10) days after receipt of notice from Seller of such failure to pay.
 - iv. Obligation Failure. Buyer fails to perform any obligation hereunder and such failure is (i) material, (ii) not excused by the provisions of Section 17 (relating to Force Majeure Events), and (iii) not cured within thirty (30) days after receipt of notice from Seller identifying the failure; provided, however, that the cure period with respect to breaches under this Subsection (iv) shall be extended for an

additional reasonable time as may be necessary (but not beyond an aggregate cure period of ninety (90) days) to complete such cure if Buyer has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

- v. Insolvency. Buyer (i) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (ii) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (iii) makes a general assignment for the benefit of its creditors; (iv) commences a voluntary case under any bankruptcy law; (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) acquiesces in, or fails to contest in a timely manner, any petition filed against Buyer in an involuntary case under bankruptcy law or seeking to dissolve Buyer under other Applicable Law; or (vii) takes any action authorizing its dissolution.

- vi. Project Site License. A Buyer Event of Default under this Subsection occurs when (i) the Site License is revoked (unless for a material breach thereof by Seller), (ii) Buyer otherwise interferes with Seller's access to and use of the Project Site and/or Premises for the purposes intended hereunder, or (iii) Seller, as a result of the action or inaction of Buyer in its proprietary capacity (and not as a result of a Force Majeure Event) otherwise loses its right to occupy, access and/or use the Project Site and/or Premises as provided under this Agreement (other than as a result of a Seller Event of Default), and, in all such cases, Buyer fails to correct such access issue within fifteen (15) days of receipt of notice thereof from Seller.

- vii. Interconnection. Buyer (acting outside its capacity as a Governmental Authority and Local Electric Utility) unreasonably interferes with Seller's interconnection of the Project and fails to cure such breach within fifteen (15) days after receipt of notice from Seller; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary (but not beyond an aggregate cure period of thirty (30) days) to complete such cure if Buyer has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

- (b) Default Damages. Upon a Buyer Event of Default, Seller may elect to terminate this Agreement. Seller's remedy in the event of such termination shall be to require that Buyer pay Seller the Early Termination Amount plus (i) any and all other amounts previously accrued and due under this Agreement and (ii) the reasonable costs of removal of the Project. Additionally, Seller may elect to pursue such other remedies as are available in law or in equity. Seller shall take all commercially reasonable efforts to mitigate its damages as the result of a Buyer Event of Default. For the avoidance of doubt, the Parties agree that actual damages would be difficult to ascertain, and the Early Termination Amount set forth in Exhibit B is a reasonable approximation of the damages suffered by Seller as a result of such an early termination of this Agreement and is not a penalty.

Section 21 – Financing Provisions

- (a) Cooperation with Financing. Buyer acknowledges that Seller (or an Affiliate) may be financing the development, construction, installation and operation of the Project. Buyer agrees that it shall cooperate with Seller and its Financing Parties in connection with such financing in a commercially reasonable manner, including providing any reasonable consents, acknowledgements, or estoppel certificates as Seller or its existing or prospective Financing Party may reasonably require, and furnishing of such reasonable information as Seller and its financing parties may request; provided, that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or increase any burdens, liabilities or obligations of Buyer (except as expressly provided in this Section 21).
- (b) Pledge of Interest. Seller may pledge its interest in this Agreement, including any rights to payment and the Project, as security for loans or financing or to transfer its rights and obligations hereunder in support thereof. If Seller's Financing Parties requests additional terms and conditions to those already provided in this Agreement, Buyer will consider any such requests in good faith, but may refuse such requests in its reasonable discretion if such additional terms and conditions alter the fundamental economic terms of this Agreement.
- (c) Financing Party Information. Concurrent with its Certification of Commercial Operation, Seller shall provide Buyer with the name and contact information of Seller's Financing Parties for the Project.
- (d) Default Notices; Right to Cure. Buyer agrees that, once notified of one or more Financing Parties, such Financing Parties (i) shall receive a copy of any notice of Seller Event of Default under this Agreement and (ii) shall have the right, but not the obligation, to cure any such default on behalf of Seller within thirty (30) days beyond the cure periods set forth in Section 19.

Section 22 – Limitation on Damages and Liability

NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, AGENTS, ADVISERS, REPRESENTATIVES, AFFILIATES, OR SUCCESSORS OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY ACTIONS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE. NOTWITHSTANDING THE ABOVE AND TO AVOID ANY CONFUSION, THIS SECTION SHALL NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS IN SECTION 15.

Section 23 – RESERVED

Section 24 – Notices

Delivery of Notices. All notices or other communications which may be or are required to be given by any Party to any other Party pursuant to this Agreement (other than Invoices which shall be delivered as set forth in Section 6(c) of this Agreement) (each, a "Notice") shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; or (iv) transmitted by email

if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Buyer:

City of Mesa Energy Resources Department
Attn: Energy Resources Program Manager
P.O. Box 1466
Mesa, AZ 85211-1466
DSWBilling@mesaaz.gov

If to Seller:

SOLON Corporation
Attn: President
2155 N Forbes Blvd, Suite 101
Tucson, AZ 85745
Email: legal@solonamerica.com

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any Notice may thereafter be given.

Section 25 – Miscellaneous

(a) Arizona Provisions. The Parties hereto acknowledge and agree as follows: i) this Agreement shall be interpreted, governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles; ii) any action, suit, or proceeding arising out of or relating to this Agreement shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the Parties irrevocably submit to the jurisdiction and venue of such court; iii) nothing herein shall be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between the Parties, and neither Buyer nor Seller nor their employees shall be deemed or considered to be the employer/employee or agent of the other for any purpose; iv) notice is hereby given that this Agreement is subject to cancellation by Buyer in accordance with the terms of A.R.S. §§ 38-511 if within three (3) years after its execution, without penalty or further obligation, any person significantly involved in initiating, securing, drafting, or creating the Agreement for Buyer becomes an employee or agent of Seller; v) the Parties hereto acknowledge and confirm that they are in compliance with A.R.S. §§ 35-391 et. seq. regarding boycotts of Israel; vi) the Parties hereto acknowledge and confirm that they are in compliance with A.R.S. §§ 35-394 regarding the use labor, goods, or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; vii) payment obligations of Buyer under this Agreement are subject to the appropriation and availability of funds in accordance with the laws of the State of Arizona, including the Arizona State Constitution Article 9, 13 and A.R.S. § 42-17106; viii) Seller must preserve the records related to this Agreement for six (6) years after its termination; ix) nothing in this Agreement shall relieve either Party of any obligation otherwise imposed by Applicable

Law; x) Any provision required by Applicable Law to be in this Agreement is hereby made a part of this Agreement as if fully stated herein.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of scanned signature delivered by email (non-automated receipt acknowledged) or electronic signature via DocuSign, Adobe, or similar service are effective to bind a Party hereto.

(c) Renewable Energy Standard. Buyer is not subject to the Arizona Corporation Commission's Renewable Energy Standard and Tariff, however, Buyer shall register Environmental Attributes to be eligible for that Renewable Energy Standard and Tariff.

(d) City Governmental Provisions.

(i) Drug-Free Workplace. Seller is hereby advised that Buyer has adopted a policy establishing a drug-free workplace for itself and those doing business with Buyer to ensure the safety and health of all persons working on Buyer contracts and the Project. Seller will require a drug-free workplace for all Seller personnel working under this Agreement. Specifically, all Seller personnel who are working under this Agreement must be notified in writing by Seller that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Seller agrees to prohibit the use of intoxicating substances by all Seller personnel and will ensure that Seller personnel do not use or possess illegal drugs, in each case, while in the course of performing their duties.

(ii) Nondiscrimination. Seller understands and acknowledges that it is the policy of Buyer to promote non-discrimination. As such, Seller represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Seller and Seller's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and any other applicable non-discrimination laws and rules.

(iii) State Sponsors of Terrorism Prohibition. Per A.R.S. § 35-392, Seller must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to Buyer.

(iv) Background Checks and Security. Buyer may conduct criminal, driver history, and all other requested background checks of Seller personnel who would perform services under the Agreement and who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law. Buyer will have final authority, based on security reasons: (i) to determine when security clearance of Seller personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Seller personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If Buyer

objects to any Seller personnel for any reasonable cause not prohibited by law, then Seller will, upon notice from Buyer, remove any such individual from performance of services under this Agreement. Any and all costs related this Section 25(c)(iv) shall be borne by Buyer.

(e) Organizational Good Standing and Compliance with Laws and Agreement. During the Term of this Agreement, each Party shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable permits, rights, privileges, licenses and franchises necessary or desirable in the ordinary course of its business that may impact or relate to this Agreement; (ii) comply with all Applicable Laws, including Environmental Laws, applicable to each Party.

(f) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Project as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to agree to confidentiality or sign a confidentiality agreement in connection therewith before acquiring knowledge of such information.

(g) WECC and WAPA Agreements. Seller shall enter into any agreements with the WECC or WAPA as may be required for generators delivering power into the WECC/WAPA-controlled grid. Except for such costs and charges as are expressly identified in this Agreement as Seller's costs, Buyer shall reimburse Seller for all costs and charges necessarily incurred under such agreements. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer;

(h) Federal and State Immigration Laws. Seller agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit Buyer and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Seller will ensure and keep appropriate records to demonstrate that all Seller personnel have a legal right to live and work in the United States.

(i) Entire Agreement. This Agreement, including the exhibits, hereto, constitutes the entire, integrated agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is made, in writing, and signed by a duly authorized officer or representative of both of the Parties.

(j) Rule of Construction. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(k) Buyer Capacity. Nothing in this Agreement shall constitute a waiver of any rights, privileges, benefits, immunities and exemptions of the City of Mesa in its governmental capacity as a municipal corporation and political subdivision of the State of Arizona; provided, however, that the Buyer represents, warrants, and agrees (and Seller acknowledges) that its execution and delivery of this Agreement and its performance of the contractual obligations

contemplated by this Agreement, constitute proprietary and commercial acts rather than public or governmental acts.

- (l) Service Contract; Forward Contract. The Parties agree that this Agreement is a service contract pursuant to Section 7701(e)(3) for the purposes of the Internal Revenue Code. Buyer shall not take the position on any tax return or in any other filings suggesting that this Agreement is anything other than a purchase of electricity from the Project unless and to the extent Buyer exercises its Purchase Option. The Parties agree that the transactions contemplated under this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- (m) Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an Affiliate of Seller, and (iii) assign this Agreement to any Person succeeding to all or substantially all of the assets of Seller, and Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments, but only upon assumption of Seller’s obligations hereunder by the assignee. Buyer’s consent to any other assignment shall not be unreasonably withheld, conditioned or delayed if Buyer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Project and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the Project and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- (n) Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- (o) No Third-Party Beneficiaries. Except for Financing Parties, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- (p) Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation Sections 3, 6, 9(e), 14, 15, 16, 19, 20, 22 and 25.

IN WITNESS WHEREOF, intending to be legally bound hereby, Seller and Buyer have executed this Power Purchase Agreement as of the date of last signature below.

Seller

SOLON Corporation

By: _____

Name (printed): Brian Seibel

Title: President

Date: _____

Buyer

City of Mesa, AZ

By: _____

Name (printed): Marc Heirshberg

Title: Deputy City Manager

Date: _____

EXHIBIT A - ENERGY PURCHASE RATES

Buyer shall pay seller for Output at the following Rates:

Contract Year	\$/kWh – Standard Production ¹
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

Total number of monthly payments over Operations Period ¹	300
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¹ Exclusive of any corrected invoices; invoices for lost revenue, invoices for Output and/or Performance Guarantee Payments and other similar invoices as may be required under this Agreement; and superseded in the event of payment of an Early Termination Amount or Buyer’s purchase of the Project.

EXHIBIT B - EARLY TERMINATION AMOUNTS

Early Termination Amount in each Contract Year shall be as follows:

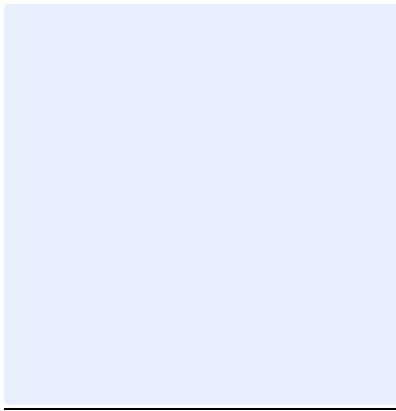
Contract Year	Early Termination Amount
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
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19	
20	
21	
22	
23	
24	
25	

EXHIBIT C - DESCRIPTION OF PROJECT SITE

The Project Site is the area directly covered by the Project (as described in the design drawings in Exhibit E).

Subject to the above constraints, the final location and layout of the Project shall be determined following completion of design and shall be subject to Buyer's approval, not to be unreasonably withheld, conditioned, or delayed, as more particularly set forth in this Agreement.

The Project Site is located within locations depicted below:



Vehicular & Pedestrian Access:

The following vehicular and pedestrian access points exist at the Project Site:

- Access point: Parking lot, open to the public.
- Vehicular access: Parking lot, open to the public.

Any temporary obstruction of such access points during construction and/or maintenance of the Project shall be in accordance with Applicable Law regarding fire lanes and shall be coordinated with Buyer as far in advance as practicable so as to avoid interference with access to the Premises and Project Site to the extent reasonably possible.

EXHIBIT D - DESCRIPTION OF PREMISES

The Premises shall consist of the real property located in the County of Maricopa, State of Arizona parcel numbers _____ depicted below:

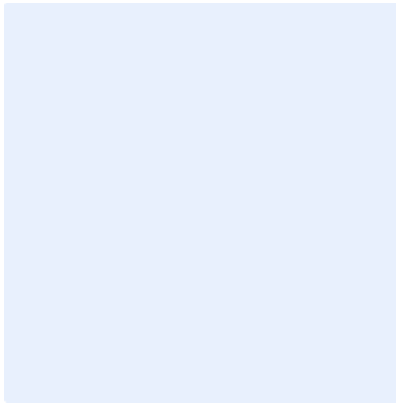


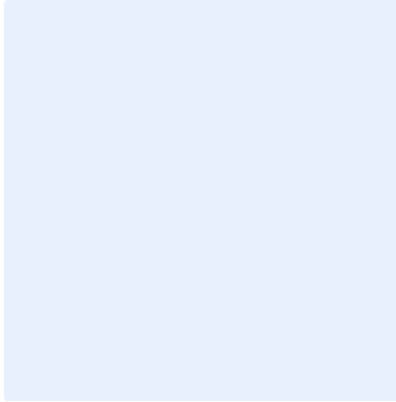
EXHIBIT E - DESCRIPTION OF PROJECT

E-1

1. Project Name:
2. Project Site Name:
3. Premises/Project Physical Address:
4. Project Installed Module Capacity (DC kW, total module nameplate capacity): Click or tap here to enter text.kW-DC at standard test conditions (STC²)
5. Project Installed Maximum Module Capacity (DC kW, total module nameplate capacity): No greater than ___ kW-DC at (STC)
6. Project Installed Inverter Capacity: No greater than kW-AC nameplate capacity.
7. Project Installed Maximum Inverter Capacity: not to exceed kW-AC nameplate capacity.
8. Expected First Year Energy Production (kWh): kWh
9. Module Information:
 - Modules:
 - Module (fixed) Tilt:
 - Module (fixed) Azimuth Angle:
10. Inverter:

² STC is: 25 degrees Celsius; and 1,000 Watts per square meter of insolation; and an air mass of 1.5 per ASTM G-173

11. Solar Structure: The following generally illustrates the structural design demarcation as Seller's structural design responsibility is cited as "PV Scope" in the illustration.



12. Test Energy Production: Per this Agreement.
13. Existing conditions which may affect solar insolation and Output of the Project:

Existing trees close to canopy structures must be trimmed to avoid future shading of the solar modules.
14. Point of Delivery: The Point of Delivery shall be at the 480VAC side of the transformer to be provided and owned by Buyer.
15. Telemetry Data: The Project shall record the following data in intervals of not less than 15 minutes:
 - a. Output
 - i. Average kW
 1. On an aggregate level and per inverter
 - ii. Average power factor
 1. On an aggregate level at the meter
 - b. Weather conditions
 - i. Average solar insolation
 - ii. Average atmospheric temperature

Buyer shall have access to kW and solar insolation data through Buyer's portal on Seller's monitoring platform.

16. Permanent Attachments to Project:
 1. Security Cameras in the following locations:

Security cameras may be furnished and installed by Buyers at a later date.

Table 1) Minimum Production Limit and Expected Production of Output by Contract Year (subject to reasonable adjustment based on final as-built configuration).

Contract Year	Minimum Production Limit (kWh)*	Expected Production (kWh)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
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21		
22		
23		
24		
25		

*Minimum Production Limit to be 80% of Expected Production.

In all Contract Years, the Minimum Production Limit as listed in Table 1 (and subject to the final Project Installed Module Capacity) shall all be multiplied by a factor of the Actual GHI divided by the Expected GHI. The total annual Expected GHI at the Project Site shall be 2,094,203 Watt-hours per square meter ("Expected GHI"). The actual Global Horizontal Irradiance shall be measured at the weather station installed by Seller for the Project ("Actual GHI").

E-2 [RESERVED]

E-3 [RESERVED]

E-4 [RESERVED]

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EXHIBIT F - INSURANCE REQUIREMENTS

I. Insurance Requirements - Initial Period:

During the Initial Period, Seller shall procure and maintain, and shall cause all contractors and subcontractors working on the Project to procure and maintain, insurance in at least the amounts set forth below, or such larger amounts as are adequate to cover the risk associated with the construction and installation of the Project, until the latter of when all of their obligations have been discharged in connection with construction of the Project or until the Commercial Operation Date, including insurance against claims for injury to Persons or damage to property that might arise from or in connection with Seller's activities on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

Buyer in no way warrants that the minimum limits contained herein are sufficient to protect Seller from liabilities that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Seller is free to purchase such additional insurance as it may determine to be necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Seller shall provide coverage with limits of liability not less than those stated below: –**Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products- Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Excess Liability-"Following Form	\$10,000,000

The policy shall be endorsed to include blanket additional insured language.

B. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance under this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include blanket additional insured language.

C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each –Employee	\$100,000
Disease - Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against Buyer, the City of Mesa.

D. Contractors Pollution Liability

Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

Seller may satisfy the Contractors Pollution Liability policy requirement indirectly through its contractor's own insurance.

- a. The policy shall provide for coverage for pollution liability that is the result of a breach of duties under this Agreement with respect to Hazardous Materials.
- b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from contracting activities for which any or all of the Seller, and its contractors, subcontractors, and material men, are legally liable.
- c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- d. The policy shall be endorsed to include blanket additional insured language covering the City of Mesa.
- e. If during the Initial Period, the transportation of any Hazardous Materials is required, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.
- f. For a "claims made" policy, Seller warrants that any retroactive date under the policy shall precede the Effective Date of this Agreement; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning upon expiration of the Initial Period.
- g. Deductibles must not exceed five hundred thousand dollars (\$500,000.00).

E. Builder's Risk Insurance or Installation Floater

Seller shall require its contractors carry Builders' Risk Insurance or Installation Float in an amount equal to costs of construction for the Project.

- a. Coverage shall be written on all risk, replacement cost basis and shall include to the extent commercially available coverage for soft costs, flood and earth movement, subject to customary sublimits.
- b. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy.

- c. Policy must provide coverage from the time any covered property becomes the responsibility of the Seller, and continue without interruption during construction and installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or offsite.
- d. Policy shall contain a waiver of subrogation against Buyer, the City of Mesa. Seller is responsible for the payment of all policy deductibles.

F. Professional Liability \$1,000,000 per claim, \$1,000,000 aggregate

Seller may satisfy the Professional Liability policy requirement indirectly through its contractor's own insurance.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

- 1. With the exception of Workers Compensation and Professional Liability, Seller's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Seller's negligence.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to Buyer; or after ten (10) days but only for nonpayment of premiums. Such notice shall be sent directly to City of Mesa Risk Manager, Mesa City Plaza 8th Floor, P.O. Box 1466, Mesa, AZ 85211-1466 and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed companies in the State of Arizona and with an "A.M. Best" rating of not less than B+ VI. Buyer in no way warrants that the above required minimum insurer rating is sufficient to protect the Seller from potential insurer insolvency.

VERIFICATION OF COVERAGE: Outside of the Notice of Intent to Proceed, upon Buyer's written request, Seller shall furnish Buyer with certificates of insurance (ACORD form or equivalent approved by Buyer) evidencing the coverages required by this Agreement. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. In accordance with Section 4(c) (Notice of Intent to Proceed), all certificates and endorsements are to be received and approved by Buyer before work commences. Each insurance policy required in this Insurance Requirements – Initial Period must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Initial Period. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal in a timely manner when requested by Buyer shall be a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Mesa Risk Manager, Mesa City Plaza 8th Floor, P.O. Box 1466, Mesa, AZ 85211-1466.

Buyer reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

CONTRACTORS AND SUBCONTRACTORS: Sellers' certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Seller shall furnish to Buyer separate certificates and endorsements for each contractor and subcontractor.

APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall be made by the Mesa City Attorney's Office, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

II. Insurance Requirements - Operations Period:

During the Operations Period, Seller shall procure and maintain (and shall cause all contractors and subcontractors working on the Project to procure and maintain) insurance in at least the amounts set forth below, or such larger amounts as are adequate to cover the risk associated with the operation and maintenance of the Project, from the Commercial Operation Date until all of their obligations have been discharged in connection with ownership, operation and maintenance of the Project, including insurance against claims for injury to Persons or damage to property that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

Buyer in no way warrants that the minimum limits contained herein are sufficient to protect Seller from liabilities that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Seller is free to purchase such additional insurance as it may determine to be necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Seller shall provide coverage with limits of liability not less than those stated below:

A. Commercial General Liability - Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$5,000,000
Products - Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$3,000,000
Excess Liability (Umbrella) - "Following Form"	\$5,000,000

The policy shall be endorsed to include blanket additional insured language.

B. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include blanket additional insured language.

C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against Buyer, the City of Mesa.

D. RESERVED

E. Property Insurance

Coverage on Project Replacement Value

- a. Property insurance shall be written on an all risk, replacement cost coverage, including to the extent commercially available coverage for flood and earth movement, subject to customary sublimits.
- b. Policy shall be in force at the time of substantial completion of the Project's construction and continue until the termination of the Agreement or until title to each the Project passes to Buyer, whichever is earlier.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

- 1. With the exception of Workers Compensation, Seller's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Seller's negligence.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to Buyer; or after ten (10) days but only for nonpayment of premiums. Such notice shall be sent directly to City of Me^{sa} Risk Manager, Mesa City Plaza 8th Floor, P.O. Box 1466, Mesa, AZ 85211-1466 and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Buyer in no way warrants that

the above-required minimum insurer rating is sufficient to protect the Seller from potential insurer insolvency.

VERIFICATION OF COVERAGE: Seller shall furnish Buyer with certificates of insurance (ACORD form or equivalent approved by the Buyer) evidencing the coverages required by this Agreement. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by Buyer before work commences. Each insurance policy required in this Insurance Requirements – Operations Period must be in effect at or prior to commencement of the Operations Period and remain in effect for the duration of the Operations Period. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal in a timely manner when requested by Buyer shall be a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Me^{sa} Risk Manager, Mesa City Plaza 8th Floor, P.O. Box 1466, Mesa, AZ 85211-1466. Buyer reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

CONTRACTORS AND SUBCONTRACTORS: Sellers' certificate(s) shall include all contractors and subcontractors as additional insureds under its policies or Seller shall furnish to Buyer separate certificates and endorsements for each contractor and subcontractor.

APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall be made by the Mesa City Attorney's Office, whose decision shall be final. Such actions will not require a formal Agreement amendment, but may be made by administrative action.

EXHIBIT G – SITE USE PROVISIONS

Seller and Buyer agree that Seller's access to and use of the Premises and Project Site as provided in Section 3 of the Agreement shall be under and subject to, and with the benefit of, the following use provisions:

1. Use Rights. Seller's right to use the Project Site during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the Project to the Local Electric Utility, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, improving, maintaining, repairing, relocating, and removing the Project on and from the Project Site; (b) constructing and installing supporting structures; (c) accessing the Project Site and the Project (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing those security measures approved by Buyer to secure the Project Site and Project; and (e) installing, maintaining, using, and repairing support cables, inverters, meters, electrical wires and cables and monitoring, metering and data telemetry equipment required for the collection and transmission of electrical energy to and from the Project.

2. Non-Interference with Insolation. Except to the extent expressly permitted under the terms of the Agreement and otherwise in existence on the Effective Date, Buyer will not, on the Premises or any adjacent property owned by Buyer, (i) construct or install buildings or structures, or (ii) plant or maintain trees or vegetation of any type, or allow any trees or other vegetation to grow, in each case, in a manner that would overshadow or otherwise block access of sunlight to the Project.

3. Laydown Area. During any construction, installation, maintenance or repair activities, Seller may temporarily use the portions of the Premises designated by Buyer and reasonably acceptable to Seller for storage of Project components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the construction, installation, maintenance and/or repair of the Project, taking all commercially reasonable steps to maintain the Premises in compliance with county and municipal ordinances and regulations. Notwithstanding the preceding, Seller recognizes and acknowledges that space on the Premises is limited, and that Seller must obtain all applicable permits in order to perform work on the Project, including but not limited to, building permits and right of way permits.

4. Notice of Entry. On and after the Commercial Operation Date as set forth in the Agreement, Seller shall, subject to Section 8 hereof, notify Buyer in advance in accordance with the Agreement before entering the Project Site to operate, maintain or repair the Project except in situations where there is imminent risk of damage to Persons or property, in which event Seller shall provide such notice as is practicable under the circumstances. Seller's contractor's personnel may be escorted by City representatives at City's sole discretion while on the Project Site.

5. Impacts to Project Site. Upon completion of installation of the Project, Seller will restore the Project Site and the Premises within a commercially reasonable amount of time to as near the condition existing as of the Effective Date as is commercially reasonable. Seller shall immediately repair, replace, or reimburse Buyer for any damage caused by Seller's negligent acts or omissions on the Project Site and Premises. The Parties agree that installation of the Project will require mounting and/or

supporting such system on the building or other improvements which makes up the Project Site, and such does not constitute damage to the Project Site within the meaning of this Paragraph 5 to the extent the Project does not exceed the structural load and stability capacity of the Project Site.

6. Rights Not Exclusive. Buyer reserves to itself, its successors and assigns, the right to grant easements and rights of way over and under the Project Site for utilities, cell tower and other uses, so long as such easements and rights of way do not create interference with the Project's operation, insolation and access to sunlight, as such access exists as of the Effective Date of this Agreement, or otherwise unreasonably interfere with the Use Rights set forth in Paragraph 1 hereof. Seller acknowledges and agrees that the Project Site will be subject to and burdened by such easements and rights of way. Notwithstanding the forgoing, nothing in this subsection shall be interpreted as limiting Buyer's authority acting in its governmental capacity.

7. Adjacent Property Use. Seller further acknowledges and agrees that the Project Site is adjacent to important City operations buildings and public event spaces. Seller shall, to the maximum extent commercially feasible, in its installation, operation and use of the Project Site and the exercise of the Use Rights provided in Paragraph 1 hereof, avoid interrupting or interfering with the operations and events at the surrounding City of Mesa facilities.

8. Right of Ingress and Egress. Seller, its agents, employees, contractors and suppliers have a non-exclusive right of ingress to and egress from the Project Site and Premises during regular business hours.

9. Right of Inspection. Buyer retains the full right of entry in and to the Project Site without notice for any purpose under this Agreement, or in the exercise of its governmental functions, and nothing herein constitutes a waiver of such functions or the police powers of Buyer in its capacity as a political subdivision of the State of Arizona. Notwithstanding the foregoing, Buyer shall give reasonable notice to Seller prior to any such entry by Buyer into the brace frames that house the inverter arrays, which will have locked, hinged covers to prevent access, except in the event of an emergency. Any entry by Buyer under this Paragraph 9 shall be subject to Seller's reasonable safety and security requirements.

10. Care and Maintenance of the Project Site. Seller agrees that nothing shall be done or kept on the Project Site and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Project Site which might be unsafe or hazardous to any Person or the Project Site; provided, that the existence of the Project on the Project Site shall not be considered an unsafe or hazardous addition provided the Project is constructed and operated according to the terms and conditions of the Agreement with Buyer and Prudent Industry Practices. Seller shall not do or permit to be done any act or thing upon the Project Site that will constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement or to the operation of the Project Site; provided, that Buyer shall assist Seller in enforcing its reasonable safety and security requirements with respect to access to the Project Site during construction of the Project and any other work performed by Seller on the Premises and/or the Project Site as permitted hereunder.

11. Noise, Vibrations, Odors and Annoyances. Seller shall conduct its operation of the Project in an orderly and proper manner so as not to commit any nuisance in the Project Site or annoy, disturb, or be offensive to the public and shall take all reasonable measures, using practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations

and to maintain the lowest possible sound level in its operations. Buyer acknowledges and agrees that customary and reasonable amounts of sound, noise, gases, vapors, odors and vibrations generated during the installation and maintenance of the Project Site for the Project and the Use Rights provided in Paragraph 1 hereof do not constitute a violation of the foregoing restrictions.

12. Accessibility. Seller shall not do or permit to be done anything which might interfere with or hinder emergency responders in their duties.

13. Utilities and Services. Buyer, at Buyer's expense, shall provide reasonable access to all of the utilities, including, without limitation, electric, sewer and water discharge, used or required at the Project Site in connection with the installation, start up, commissioning, testing, operation, maintenance and/or repair of the Project. Notwithstanding the foregoing, Buyer shall have no obligation to add infrastructure to meet Seller's utility needs.

14 Advertising. Seller shall not install or have installed or allow to be installed upon or within the Project Site, without the prior written approval of Buyer in its sole and absolute discretion, any sign, either lighted or unlighted, poster or other display of advertising media, including but not limited to material supplied by manufacturers of merchandise offered for sale; provided, that Seller shall be permitted to install customary signage for warning, ownership and contact information purposes.

EXHIBIT H - INTERCONNECTION AGREEMENT

AGREEMENT FOR INTERCONNECTION

BETWEEN

THE CITY OF MESA AND [SELLER]

This Agreement for Interconnection Service (“Agreement”) is made and entered into as of the _____ of _____, 202____ (“Effective Date”), by and between _____, an Arizona Corporation (hereinafter “Generator”), and the **CITY OF MESA**, an Arizona municipal corporation organized and existing under the laws of the State of Arizona (hereinafter “City”). From time to time Generator and City of Mesa shall be individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Generator is installing a Generation Equipment (hereinafter called the “Generation Equipment”) at Generator’s location (**Address**) (“the Site”);

WHEREAS, the Generation Equipment is located in City’s Energy Resources Department’s electric utility’s (“ERD Electric Utility”) distribution service area (the “Electric Service Area”), and ERD Electric Utility provides electric power and energy to the Site;

WHEREAS, Generator desires to establish interconnection with ERD Electric Utility at the Site so Generator may operate a Generation Equipment in parallel with the ERD Electric Utility electric system (the “System”);

WHEREAS, City and Generator have entered into a Power Purchase Agreement (“PPA”) dated _____ which requires an executed Agreement for the interconnection of service prior to operation of any Generation Equipment in parallel with the System;

NOW, THEREFORE, in consideration of the Recitals and the mutual undertakings and agreements contained in this Agreement, the Parties covenant and agree as follows:

1. **APPLICABILITY:** In order for Generator to be eligible to enter into this Agreement, Generator represents and warrants that it has met all of the following conditions (“Applicability”):
 - A. Generator has complied with all Generator Obligations as set forth in this Agreement that are required to be complied with prior to interconnection, including but not limited to those set forth in Section 4 and Section 5 hereof.
 - B. Generator has submitted a complete record of the proposed equipment satisfactory to ERD Electric Utility, and all information, specifications, designs and test results specified in, and consistent with the requirements of, this Agreement (including Exhibit A and Exhibit B).
 - C. Generator has provided evidence of insurance as required in Section 16 of this Agreement and such insurance has been accepted as to form and requirements by the City.

2. TERM: This Agreement shall become effective as of the Effective Date and, unless otherwise provided herein, will continue in effect coterminous with the term of the PPA. Any termination (other than termination for cause by City) requires written notice given at least ninety (90) days prior to the expiration of the existing term. No termination by Generator is permitted at any time Generator's Generation Equipment remains interconnected to the System unless City has exercised its purchase option under the PPA.

3. INTERCONNECTION POINT: The point(s) of interconnection ("Interconnection Point(s)") must be as indicated in Exhibit A and B, such determination to be solely within ERD Electric Utility's discretion.

4. GENERATOR'S OBLIGATIONS: Generator is, at its own risk and expense, responsible for all costs and requirements relating to the Generation Equipment, any cost and requirement to maintain, operate, and repair Generator's side of the Interconnection Point, and all costs incurred by the City or ERD Electric Utility incurred as a result of interconnecting, or maintaining its System's interconnection with the Generation Equipment in the manner required by City. These obligations include, but are not limited to:
 - A. Having any necessary permits to own and operate the Generation Equipment as then required by any state, local, or other authority having jurisdiction and use of a licensed, bonded and insured contractor to design and install the Generation Facility. Eligible license classifications for contractors include: B-, C-05 (Solar), C-11, KB-1, KB-2, KO- (Solar), K-05 (Solar), K-11, or other license accepted by City. Cooperating with ERD Electric Utility including complying with any City Electric Utility Interconnection Guidelines as they may be revised from time to time.
 - B. Complying with the Technical Interconnection Requirements set forth in Exhibit B attached hereto and hereby incorporated as part of this Agreement as such requirements may be modified from time to time.
 - C. Operating and maintaining the Generation Equipment and all other Generator-owned equipment on Generator's side of the Interconnection Point(s) in good repair, in accordance with manufacturer's guidelines and prudent electrical practices, and providing written evidence of such compliance to City upon request.
 - D. The payment of all costs, fees, and expenses, including those set forth in Section 5 of this Agreement, relating to the initial installation and interconnection and/or reasonable changes in Generator's connection, protective, or control equipment that may be required from time to time to meet conditions and requirements as set forth in the then current Rules and Regulations- Electric Utility, any City permitting requirements, and any other currently existing requirements of the City relating to Generator's interconnection with the System. Generator's obligation for payment to City also includes any and all costs

City incurs to accommodate approved Generator modifications to its Generation Equipment.

- E. Generator must provide valid and updated evidence of insurance accepted as to form and substance by the City.

5. [SECTION INTENTIONALLY OMITTED]

6. **GENERATOR ACKNOWLEDGMENT: Generator understands, acknowledges, and agrees that City's review of information, application, specifications, designs and test results shall not be construed as confirming or endorsing the design or as any warranty of safety, durability or reliability of Generator's Generation Equipment, or the technical or economic feasibility of the Generation Equipment. The sole purpose of City and ERD Electric Utility review is to evaluate whether the Generation Equipment will have an impact on the City's System.**

7. PARALLEL OPERATION:

- A. Generator must not commence parallel operation of the Generation Equipment until ERD Electric Utility has: i) received documented assurance in the form of manufacturer's drawings and UL Listings from Generator that all parallel generation at the facility is incapable of energizing any portion of the System that may have separated from the rest of the System, ii) received documented assurance that all Generation Equipment is installed in accordance with the requirements of Exhibit B, and iii) has given final written authorization to Generator.
- B. ERD Electric Utility reserves the right in its sole and absolute discretion to review all information, specifications, designs, and test results relating to the Generation Equipment. Generator understands that any review by ERD Electric Utility is only to ensure that it will not harm or interfere with ERD Electric Utility's electrical distribution system.
- C. Generator must permit the City to witness the functional testing of all protective equipment and schemes. ERD Electric Utility must inspect the Generation Equipment and witness testing of any equipment or devices associated with the interconnection **prior to** giving written approval for parallel operation. Such prior written approval will not be unreasonably withheld by ERD Electric Utility.
- D. To prevent hazardous connections, Generator must install and properly maintain the devices specified in Exhibit B. In addition, Generation Equipment control circuit(s) must be designed in accordance with all electric utility standards. Manufacturer's literature and proof of UL listing may be used to provide the necessary documentation.
- E. Generator shall make such modifications on an ongoing basis as necessary and requested by ERD Electric Utility to the Generator's Generation Equipment to enable ERD Electric Utility to operate its System as safely and reliably as possible.
- F. ERD Electric Utility reserves the right to inspect the Generation Equipment whenever it has reason to believe that (i) Generator may be operating in a manner unsafe or harmful

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to the System, City personnel, the public, or customers, or (ii) Generator is in default or has otherwise violated the terms of this Agreement or any manufacturer's guidelines associated with the Generation Equipment. In such circumstances, ERD Electric Utility may also request that Generator test the Generation Equipment and provide it the results in writing irrespective of periodic testing of equipment that may be required or has been completed. Alternately, and at its option, City may, at Generator's expense, test the Generation Equipment.

8. INTERRUPTION OF INTERCONNECTION AND DISCONNECTION:

- A. ERD Electric Utility, in its sole and absolute discretion, may require Generator to disconnect the Generation Equipment from the System or interrupt or reduce deliveries of energy to ERD Electric Utility:
- i. When necessary to investigate, inspect, construct, install, maintain, repair, replace, or remove any ERD Electric Utility equipment, any part of System, or the Generation Equipment; or
 - ii. Because of emergencies, forced outages, uncontrollable forces, or compliance with prudent electrical practice; or
 - iii. Generator is in material default of this Agreement.

- B. Notwithstanding any other provision of this Agreement, if ERD Electric Utility, in its sole and absolute discretion, determines that continued operation of the Generation Equipment may:
- i. Endanger City or ERD Electric Utility personnel or the general public; or
 - ii. Impair the integrity of the System;

or if:

- iii. A System emergency exists;
- iv. A System maintenance or construction outage is in process;
- v. Generator is in material default of this Agreement; or
- vi. Generator is in default of any manufacturer's guidelines relating to the Generation Equipment;

then, in any such case, ERD Electric Utility may disconnect the Generation Equipment from the System. In such event, the Generation Equipment must remain disconnected until ERD Electric Utility is satisfied that the condition(s) resulting in the disconnection have/has been completely and satisfactorily corrected.

- C. ERD Electric Utility, as it deems prudent, may open the load-break disconnect device specified in Exhibit B, to separate the Generation Equipment from the System. Generator must not close the load-break disconnect switch unless ERD Electric Utility has first energized its service to the Interconnection Point(s).

9. REQUIRED GENERATOR CHANGES: ERD Electric Utility may provide notice to Generator of any changes required by ERD Electric Utility if Generator's existing Generation Equipment is not or is no longer adequate to protect the System and its safety and reliability. Absent any immediate

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threat of danger to persons or damage to property, Generator must institute such changes within a reasonable period, not to exceed sixty (60) days, after receipt of notice from ERD Electric Utility. Except as may be otherwise provided in this Agreement, Generator must make such changes at its own expense, and only after receiving written approval from ERD Electric Utility.

10. [SECTION INTENTIONALLY OMITTED]
11. DATA: Generator agrees to let ERD Electric Utility monitor the output of the Generation Equipment and will, if available and upon written request, provide ERD Electric Utility output information to which Generator has access. Generator acknowledges that City and/or ERD Electric Utility collected data from the Generation Equipment constitutes public information.
12. PROTECTION AND SECURITY OF CITY PERSONNEL AND PROPERTY: Generator must not compromise any safety or security measures taken by City, and must exercise reasonable care to prevent unauthorized access to the Generation Equipment, System or ERD Electric Utility equipment located at the Site.
13. UNCONTROLLABLE FORCES: The Force Majeure provisions in Section 17 of the PPA shall also apply this this Agreement.
14. INDEMNIFICATION: To the fullest extent permitted by law, Generator must indemnify, defend and hold harmless City, ERD Electric Utility, any and all of the members of their governing bodies, their officers, agents, representative, and employees ("City Indemnifieds") for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities, whether direct, indirect or consequential, related to, arising from, or in any way connected with: (a) Generator's or any non- ERD Electric Utility party's design, construction, installation, inspection, maintenance, testing or operation of the Generation Equipment used in connection with this Agreement; and (b) the interconnection of the Generation Equipment with, and delivery of energy from the Generating Equipment to the System. Generator's obligations under this Section shall survive the termination of this Agreement.
15. LIABILITY AND DAMAGES: NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF CITY AND GENERATOR HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.
16. INSURANCE: This Agreement is provided subject to Generator's and any subsequent lawful assignee's compliance with all material terms and obligations under the PPA including, but not

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limited to, the obligation to have and maintain insurance and name City as an additional insured. Without limiting the preceding sentence, Generator also specifically acknowledges and agrees as follows with respect to its insurance obligations:

- A. Upon execution of this Agreement, Generator must deliver a certificate of insurance or self-insurance, if reasonably acceptable to the City, and endorsement directly to City demonstrating that Generator has obtained/has general liability insurance as required by City.
- B. Any such general liability insurance shall include coverage for property damage, operations, and contractual liability.
- C. Certificates of Insurance and endorsements evidencing the coverage and provisions required in this Section 16 shall be furnished to City of Mesa prior to interconnection.
- D. The general liability insurance specified in this Section 16 must name City, its officers, employees, volunteers and elected officials as additional insureds and shall contain a severability of interest and waiver of subrogation clause.
- E. Generator must continue to provide insurance as required by the City throughout the period that the Generation Equipment is interconnected. Upon the City’s written request, Generator shall provide to the City, at its expense, updated certificates of insurance.

17. NOTICES:

- A. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be properly served, given or made, if delivered in person, sent by U.S. mail, postage prepaid, or if sent by overnight delivery service, addressed as follows. Notice may also be given by electronic mail (e-mail); provided, a copy of the notice shall be promptly mailed or sent by overnight delivery service to the appropriate address in the manner stated below:

<u>Hand Delivery</u>	<u>Hand Delivery</u>
City of Mesa DSWBilling@mesaaz.gov Attn: Energy Resources Program Manager 640 North Mesa Drive Mesa, AZ 85211-1466	
<u>U.S. Postal Service</u> City of Mesa:	<u>U.S. Postal Service</u> Generator:
City of Mesa Attn: Energy Resources Program Manager PO Box 1466	

Mail Stop 5030 Mesa, AZ 85211-1466	
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- B. Either Party may change its address or the person designated to receive notification hereunder by giving notice of such change in the manner provided above.

- 18. NO THIRD PARTY BENEFICIARIES AND TRANSFER OF INTEREST IN AGREEMENT: This Agreement is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties. This Agreement shall inure to the benefit of and be binding upon any successor or assign of City and/or ERD Electric Utility whether such succession or assign is by voluntary transfer or operation of law. Generator must not assign this Agreement or its rights or obligations hereunder without the prior written consent of ERD Electric Utility, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall inure to the benefit of and be binding upon any permitted assign of Generator; provided, that at City's sole discretion, any successor to Generator in the operation of the Generation Equipment intending to interconnect with ERD Electric Utility may be required to negotiate and execute a separate Agreement for Interconnection Service prior to any such transfer.

- 19. [SECTION INTENTIONALLY OMITTED]

- 20. NON-WAIVER: None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing. No waiver by either Party of any one or more defaults in the performance of the provisions of this Agreement shall operate or be construed as a waiver of any other existing or future default or defaults.

- 21. [SECTION INTENTIONALLY OMITTED]

- 22. CONFORMANCE TO LAW, GOVERNING LAW AND VENUE: Generator must conform to all applicable federal, state, county and local laws, ordinances, codes, rules, regulations and permit requirements, including construction, zoning, operating and environmental regulations. This Agreement shall be construed in accordance with the laws of the State of Arizona without regard to its conflict of laws provisions. Any court action arising under this Agreement shall be initiated and prosecuted in a state or federal court in Maricopa County, Arizona.

- 23. SEVERABILITY OF AGREEMENT: If any provision hereof or any portion of any provision hereof shall be deemed invalid, illegal or unenforceable, such invalidity, illegality, or unenforceability, shall not alter the remaining portion of any provision, or any other provision hereof, as each provision of the Agreement shall be deemed to be severable from all other provisions hereof.

24. NOTICE: Generator is hereby notified of the following Arizona Revised Statutes to the extent applicable to an agreement of this nature of this Agreement:

- A. A.R.S. § 23-214 - Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers
- B. A.R.S. §35-392 - State treasurer and retirement System divestments; policy notices
- C. A.R.S § 38-511 – Cancellation of political subdivision and state contracts;
- D. A.R.S. § 39-121 - Inspection of public records
- E. A.R.S. § 41-4401 – Government procurement; e-verify requirement
- F. Arizona Constitution Article 9, 13, A.R.S. § 41-17106 – expenditures limited to budgeted purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date written above.

GENERATOR

BY: _____

PRINT NAME:

TITLE:

CITY

BY _____

Scott Bouchie Its: Energy Resources Department Director

EXHIBIT A
ONE-LINE DRAWING OF POINT OF DELIVERY TO GENERATOR
AND POINT OF SEPARATION OF GENERATOR'S GENERATION EQUIPMENT

EXHIBIT B

TECHNICAL INTERCONNECTION REQUIREMENTS

City may from time to time require changes in Generator's connection, protective, or control equipment to meet changing conditions and requirements for the Generation Equipment or System.

1.0 GENERAL OBLIGATIONS:

- 1.1 Generator must ensure, at its sole expense, that the electrical characteristics of its load and generation equipment conform to City's normal power quality requirements. Any deviation from sine wave form or unusual interval fluctuations in power demand or production must not result in impairment of electrical service to others. Power factor must be within the acceptable limits defined by ERD Electric Utility's Electric Distribution Specifications and its Rules and Regulations.
- 1.2 Generator must, at its own expense, design, own, operate and maintain the Generation Equipment in good repair in accordance with manufacturer's guidelines and prudent electrical practices including, but not limited to NFPA 70 and Section 690 of the National Electrical Code, and provide written evidence to City of such compliance upon request of City.
- 1.3 Generator must install only Underwriters Laboratories Inc. (UL) certified equipment and devices as part of the Generation Equipment, unless otherwise approved in writing by City. Inverter must be certified as UL 1741 compliant. Generator must provide evidence of UL 1741 compliance by submitting manufacturer's written specifications to City. New systems must only use PV modules and inverters approved under California SB1 guidelines (which can be found online at <http://www.gosolarcalifornia.org/equipment>).
- 1.4 The Generation Equipment at the Site must be off-line before the City electric service is restored (reclosed) following a trip of the City's feeder breaker or other protective device. See the Agreement to which this Exhibit is attached for requirement of written assurance.
- 1.5 Relaying and protection requirements stated herein shall take into consideration whether Generator has more than one Generation Equipment, and whether such Generation Equipment can be switched by Generator among multiple Interconnection Points.
- 1.6 During ERD Electric Utility Hot Line Tag (situations when Reclosing of a feeder breaker is disabled for the additional safety of line personnel working on or near energized lines and/or equipment) conditions, the Generator's loads may not be able to be served by another 12kV feeder. ERD Electric Utility reserves the right to isolate the Generation Equipment via the disconnect device (Section 2) and the customer will operate solely from energy provided by ERD Electric Utility.

2.0 LOCKABLE LOAD-BREAK DISCONNECT SWITCH: Generator must install a lockable load-break disconnect switch with a visible break for use by the City as a means of electrically isolating the System from the Generation Equipment and to establish working clearance for maintenance and repair work in accordance with the City's and ERD Electric Utility's safety rules and practices, subject to the following requirements:

- 2.1 The disconnect switch must be **CLEARLY IDENTIFIED AND MARKED BY GENERATOR AND EASILY ACCESSIBLE** at all times to the City's personnel.
- 2.2 The disconnect switch **MUST BE LOCKABLE ONLY IN THE OPEN POSITION** with a standard City or ERD Electric Utility padlock. Only City personnel may remove this padlock. **UNAUTHORIZED REMOVAL IS DEEMED A MATERIAL BREACH OF THIS AGREEMENT.**
- 2.3 Generator is responsible for all labor and material costs to install, maintain, repair, or replace the disconnect switch.
- 2.4 The disconnect switch(es) and its/their location(s) must be approved by ERD Electric Utility prior to installation.
- 2.5 The disconnect switch may be opened by the City at any time without notice.
- 2.6 The disconnect switch must be labeled by the Generator as follows:

GENERATION DISCONNECT SWITCH WARNING!

ELECTRICAL SHOCK HAZARD

DO NOT TOUCH TERMINALS

TERMINALS ON BOTH THE LINE AND LOAD SIDES MAY BE ENERGIZED IN THE
OPEN POSITION

- 2.7. If the Generation Equipment is on a structure separate from the location of the delivery point/SES, multiple placards are required to be installed and should be shown at all SES of the structures, with concise directions to, and the location of, the SES and solar panel Disconnect Switches. Disconnect Switches to be installed shall be labeled 1/x, 2/x, etc. where x is the total number of Disconnect Switches. Placards must be embossed or engraved metal, permanently riveted or screwed onto the panels.

3.0 [SECTION INTENTIONALLY OMITTED]

4.0. METERING OF GENERATION EQUIPMENT: Generator must install a meter socket and wiring to allow measurement of energy production from the Generation Equipment. The meter socket and its installation must be in accordance with ERD Electric Utility specifications.

- 4.1 The meter socket must be wired such that the meter runs forward while measuring generation from the Generation Equipment.
 - 4.2 There must be no load connected on ERD Electric Utility's side of Generator's meter. The breaker in the Generator's main distribution panelboard connected to the Generation Equipment must have no other load, and must be a dedicated circuit.
 - 4.3 ERD Electric Utility may, in its sole discretion, provide and install a meter to measure energy production from the Generation Equipment.
- 5.0 ACCEPTANCE TESTING AND INSPECTION: Prior to commencing parallel operation of the Generation Equipment with the System, the Generation Equipment will be subject to acceptance testing and inspection whereby the ERD Electric Utility may, in its sole discretion, verify the safe and proper operation and interconnection of the Generation Equipment including but not limited to the following:
- 5.1 All equipment comprising the Generation Equipment must be the same, approved equipment listed by the Generator in the Application.
 - 5.2 All equipment comprising the Generation Equipment and the remainder of the Generator's electrical service falls within the guidelines and technical specifications listed in this Agreement.
 - 5.3 The energy produced is both within the acceptable limits for voltage and power quality and that the energy produced is within the normal tolerances for the expected energy output of the Generation Equipment.
 - 5.4 The Generation Equipment stops the flow of energy from the Generation Equipment to the System when an electrical outage is simulated.

Failure of any acceptance testing and inspection may result in ERD Electric Utility's refusal to allow the interconnection of the Generation Equipment.

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EXHIBIT I - INTERCONNECTION AND TEST DOCUMENTATION

Buyer's Energy Scheduling Agent: The Western Area Power Administration Energy Management & Marketing Office

Power Specifications: 59.3 – 60.5 Hz, Power factor ≥ 0.95 , 480 Volts AC +10%/-10% Volts AC, three phase

EXHIBIT J - BLANK

Exhibit intentionally omitted.

EXHIBIT K - CERTIFICATION OF COMMERCIAL OPERATION

This Certification of Commercial Operation ("Certification") is delivered by _____ ("Seller") to The City of Mesa ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated as of the Effective Date ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies, represents and warrants to Buyer the following:

1. Commercial Operation Date occurred on: _____ [date];
2. The Project representing _____ kW DC of installed capacity is mechanically complete.
3. The Project is successfully interconnected to Buyer's Local Electric Utility consistent with the Interconnection Agreement.
4. The Project is capable of generating Output consistent with its nameplate ratings and in accordance with the manufacturer's specifications and the terms of the Agreement.

EXECUTED by Seller this ____ day of _____, 20__.

By: _____

Name: _____

Title: _____

RECEIVED by Buyer this ____ day of _____, 20__.

By: _____

Name: _____

Title: _____

EXHIBIT L - SELLER CONDITIONS PRECEDENT DOCUMENTATION

Seller shall provide to Buyer all of the following documentation concurrent with Seller's execution of the Agreement:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect, or anticipated to be in effect, on the date of Seller's execution of the Agreement.
2. Evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. A copy of the most recent financial statements (which may be unaudited) from Seller and Seller's parent together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to Seller's execution of the Agreement, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, properties, business or prospects of Seller since the date of such financial statements.

EXHIBIT M - PROJECT MILESTONES

Section I Project Milestones

The Parties agree time is of the essence in regards to the Agreement and construction and installation of the Project. As such, the Parties also agree certain Project milestones must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any reasonably requested documentation to support the achievement of milestones within ten (10) Business Days of receipt of such request by Seller.

- (a) **Remedial Action Plan.** Subject to subsection (b) below, if Seller anticipates that it will miss a Guaranteed Project Milestone (as defined below), Seller shall submit to Buyer a remedial action plan (“Remedial Action Plan”), which shall provide a detailed description of its proposed course of action to achieve such Guaranteed Project Milestone; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to make the applicable Performance Guaranty Payments.
- (b) **Guaranteed Project Milestones.** “Guaranteed Project Milestones” are as follows:
- (1) **Guaranteed Construction Start Date.** Seller shall commence construction of each Project (the “Construction Start Date”) no later than the date provided below (the “Guaranteed Construction Start Date”); provided, that the Guaranteed Construction Start Date may be extended on a day for day basis if any of the following arise (each, a “Permitted Extension”):
- (A) Seller has used commercially reasonable efforts, (including but not limited to Seller’s timely filing of required documents and payment of all applicable fees) but is unable to proceed due to delays beyond Seller’s reasonable control; or
 - (B) Buyer Delay or delays caused by the Local Electric Utility; or
 - (C) Force Majeure Event; provided that Seller works diligently to resolve the effect of the Force Majeure Event and provides evidence of its efforts promptly to Buyer upon Buyer’s written request;

Lack of financing or inability to fund the Project shall not form the basis for a Permitted Extension.

<u>Guaranteed Construction Start Date</u>
5/31/2025

- (2) **Guaranteed Commercial Operation Date.** Seller shall achieve the Commercial Operation Date for the Project no later than the date which is two hundred and ten (210) days following the Construction Start Date (the “Guaranteed Commercial Operation Date”), provided that the Guaranteed Commercial Operation Date may be extended on a day for day basis for a Permitted Extension.
- (c) If Seller claims a Permitted Extension, Seller shall promptly provide Buyer with Notice prior to the original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify

the Permitted Extension being claimed and include information reasonably necessary for Buyer to verify the length and applicability of the extension.

Section II Cure Period and Performance Guarantee Payments.

- (a) If Seller fails to timely complete a Guaranteed Project Milestone, after giving effect to Permitted Extensions, then Buyer shall be entitled to liquidated damages equal to the daily Performance Guarantee Payments set forth in subsection (d) below for each day that the Guaranteed Project Milestone is not timely completed up to a total of sixty (60) days. Upon completion of the Guaranteed Project Milestone, the applicable Performance Guarantee Payments shall cease accruing.
- (b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (ii) the Performance Guarantee Payments are an appropriate approximation of such damages and not a penalty. Seller shall be entitled to the return of the Performance Guarantee Payments collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date if Seller meets the original Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions). For sake of certainty, Buyer shall retain all Performance Guarantee Payments drawn (or which Buyer is entitled to draw) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).
- (d) Performance Guarantee Payments shall be equal to two hundred fifty dollars (\$250) per day.

EXHIBIT N - EXTERIOR SURFACES PAINT SPECIFICATION

Exterior coating materials: The following materials coat and protect the Project:

Surface	Coating Material	Coating Color	Manufacturer's Expected Lifespan (Years)
Supporting Vertical Structural Columns	Paint	To be determined by Buyer	25 Years
Horizontal Support Beams	Paint	To be determined by Buyer	25 Years
[INSERT OTHER PROJECT SURFACES]			

EXHIBIT O - AS-BUILT DRAWINGS

To be incorporated in accordance with Section 4(p) of the Agreement