

**DIRECT TESTIMONY OF ANDREW S. RITCH
WHOLESALE RENEWABLES MANAGER
DUKE ENERGY BUSINESS SERVICES LLC
ON BEHALF OF
DUKE ENERGY INDIANA, LLC
BEFORE THE INDIANA UTILITY REGULATORY COMMISSION**

I. INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Andrew S. Ritch and my business address is 139 E. 4th Street, Cincinnati,
4 Ohio 45202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Duke Energy Business Services LLC (“Duke Energy Business
7 Services”), a service company affiliate of Duke Energy Indiana, LLC (“Duke Energy
8 Indiana”, “Company”, or “Petitioner”), as Wholesale Renewables Manager.

9 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL EXPERIENCE.**

10 A. I have a Bachelor’s degree from Colby College in Waterville, ME and an MBA from the
11 F.W. Olin Graduate School of Business at Babson College in Wellesley, MA.

12 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

13 A. I have worked for Duke Energy and its predecessor companies since 2002. My career
14 began in a management training program leading efforts in Strategic Sourcing and
15 Corporate Budgeting and Financial Forecasting. In 2006, I moved to a Senior Analyst
16 role in Investor Relations. Prior to my current role, I was the Director of Corporate
17 Strategy and Business Planning for the U.S. Franchised Electric and Gas Businesses.

18 **Q. WHAT ARE YOUR PRIMARY RESPONSIBILITIES AS THE WHOLESALE**

ANDREW S. RITCH

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1 **RENEWABLES MANAGER?**

2 A. I am responsible for providing overall strategy and direction for renewable energy assets
3 within Duke Energy's Midwest regulated businesses, including Duke Energy Indiana.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to describe the Company's proposed Solar Services
6 Program, to be offered under the terms of the proposed Standard Contract Rider No. 26
7 ("Rider 26" or "Solar Services Program"). The proposed tariff is attached as Petitioner's
8 Exhibit 1-A.

9 **II. SOLAR SERVICES PROGRAM PROPOSAL**

10 **Q. WHY IS DUKE ENERGY INDIANA PROPOSING THIS SOLAR SERVICES**
11 **PROGRAM?**

12 A. The Company has proposed this offering to address the increasing interest of our non-
13 residential customers in having additional service options for cleaner energy. This
14 program provides our customers an alternative financing method for on-site solar energy
15 facilities compared to traditional ownership. The Company will install, operate, and
16 maintain a solar energy facility on the customer's premises, and the customer will receive
17 the electrical output of the facility.

18 **Q. WAS THIS TARIFF DEVELOPED AS PART OF THE 2016 EDWARDSPORT**
19 **SETTLEMENT AGREEMENT COLLABORATIVE?**

20 A. Yes, it was. Under the terms of the 2016 Edwardsport Settlement Agreement, the settling
21 parties agreed to meet quarterly to discuss solar and low-income customer options in

1 Duke Energy Indiana's service territory. Although the Settling Parties are not formally
2 supporting or opposing the Company's proposed solar services program, it has been
3 discussed among the parties and changes to the proposal have been made based on
4 feedback from the Settling Parties.

5 **Q. WHAT OTHER PROGRAM PARAMETERS DID THE COMPANY AGREE TO?**

6 A. The Company agreed that participants under Rider 26 would be eligible for net metering,
7 but solar facilities installed pursuant to this program will be in addition to and will not
8 count against the system net metering cap contained in the Company's net metering tariff,
9 Standard Contract Rider No. 57. Therefore, this customer option would not be competing
10 with other customer options for the net metering eligibility under the system-wide cap.
11 The Company also agreed that Rider participation would initially be limited to a total of
12 12 MWs. Finally, for the first five years of the program, the Company agreed not to use
13 an affiliate to construct these facilities.

14 **Q. WHICH OF DUKE ENERGY INDIANA'S CUSTOMERS CAN PARTICIPATE**
15 **IN THE SOLAR SERVICES PROGRAM?**

16 A. This tariff is available to non-residential customers served under the following rate
17 schedules: Rate CS, Rate LLF, Rate HLF and Rate WP.

18 **Q. WHY ARE RESIDENTIAL CUSTOMERS NOT INCLUDED AT THIS TIME?**

19 A. At this time, the Company only plans to offer this tariff to a limited number of non-
20 residential rate classes in order to gain experience with this offering prior to considering
21 opening it up to broader groups, such as residential customers.

1 **Q. CAN QUALIFYING CUSTOMERS WHO PURCHASE LAND OR BUILDINGS**
2 **FROM EXISTING TARIFF PARTICIPANTS CONTINUE IN THE PROGRAM?**

3 A. Yes, subject to the terms and conditions of each customer's specific Service Agreement
4 with the Company. The form of service agreement Duke Energy Indiana will be using
5 for this program is attached as Petitioner's Exhibit 1-B.

6 **Q. WHAT SIZE LIMIT IS DUKE ENERGY INDIANA PROPOSING FOR EACH**
7 **SOLAR ENERGY FACILITY?**

8 A. The Company is proposing that each facility be limited to the sizing requirements of
9 Standard Contract Rider No. 57 - Net Metering.

10 **Q. CAN CUSTOMERS HAVE THEIR ELECTRIC SERVICE DISCONNECTED**
11 **DUE TO NON-PAYMENT UNDER THE SERVICE AGREEMENT?**

12 A. No. Participating customers will not be subject to disconnection of their retail electric
13 service due to non-payment under the Service Agreement.

14 **Q. HOW WILL THIS OFFERING BE IMPLEMENTED?**

15 A. The Company will make all eligible customers who express interest in solar aware of this
16 offering through Duke Energy teams, such as our Large Account Management
17 Organization, our Community Relations Team, and our Large Customer Solutions Team
18 within the Distributed Energy Technology Department. The Company will work with
19 third party solar developers who meet Duke Energy supplier standards to develop,
20 competitively procure and construct the solar facilities for participating customers. The
21 Company engaged a variety of solar developers active in the Duke Energy Indiana

1 territory to preview this offering during which the developers expressed their interest in
2 participating in the program.

3 **III. ACCOUNTING AND RATEMAKING TREATMENT**

4 **Q. WHAT ACCOUNTING AND RATEMAKING TREATMENT IS DUKE ENERGY**
5 **INDIANA PROPOSING?**

6 A. Duke Energy Indiana proposes that all costs and revenues associated with this tariff be
7 treated “below-the-line” for accounting and ratemaking purposes. This segregates the
8 Rider 26 tariff’s financial activity from the Company’s jurisdictional business. This
9 treatment helps ensure non-participating customers will not subsidize participating
10 customers and that Duke Energy Indiana intends to cover all the costs of the program
11 (*i.e.*, marketing, etc.) with the revenues from voluntarily participating customers.

12 **IV. COMMISSION APPROVALS REQUIRED**

13 **Q. WHAT SPECIFIC APPROVALS IS DUKE ENERGY INDIANA REQUESTING**
14 **IN THIS PROCEEDING?**

15 A. The Company is filing this request under the Alternative Utility Regulation provisions of
16 Indiana Code (Indiana Code 8-1-2.5). The aggregate of all the generation to be eligible
17 under Rider 26 is 12 MW, and although these smaller solar projects are exempt from
18 typical requirements of a Certificate of Public Convenience and Necessity (“CPCN”) in
19 Indiana, they still require Commission approval under Indiana Code § 8-1-8.5-7(4).
20 Duke Energy Indiana is requesting the Commission approve an alternative regulatory
21 plan or otherwise decline its jurisdiction over this optional tariff offering, so that Duke

1 Energy Indiana may individually price this optional service to customers based on
2 available market prices and may construct solar energy facilities for participating
3 customers without needing to seek separate Commission approval for each facility. In
4 that regard, it is my opinion that the public interest is served by approval of this option
5 because there are technological and competitive forces that render Commission
6 jurisdiction unnecessary, the option provides benefits to the Company and its customers,
7 and promotes energy utility efficiency. Further, this option allows Duke Energy Indiana
8 to effectively compete with providers of functionally similar services.

9 For instance, today our commercial and industrial customers can purchase solar
10 energy facilities themselves or work with developers to install a system, with a variety of
11 financing options. Through this tariff offering, Duke Energy Indiana is just providing
12 one more option customers can choose from. Importantly, this choice comes from a
13 trusted energy adviser, their own utility company which promotes utility energy
14 efficiency by allowing Duke Energy Indiana to serve its customers in a variety of ways.
15 Additionally, as explained above, all the costs associated with the system are ultimately
16 borne by the participating customer, other customers are not subsidizing this service, so
17 there is no a need for extensive Commission oversight.

18 **V. STANDARD CONTRACT RIDER NO. 26**

19 **Q. PLEASE DESCRIBE PETITIONER'S EXHIBIT 1-A.**

20 A. Petitioner's Exhibit 1-A is the Company's proposed solar services program tariff.

21 **Q. PLEASE DESCRIBE THE MAIN PROVISIONS OF THE RIDER.**

1 A. This voluntary program offering allows for eligible customers to have solar energy
2 facilities installed on their premises to be constructed, operated, and maintained by the
3 Company and receive the kwh output of the facility. Eligible customers include non-
4 residential customers on the following rate schedules: Rate CS, Rate LLF, Rate HLF and
5 Rate WP. The agreement between the Company and the participating customers will
6 have a term of up to twenty (20) years and pricing will vary depending on the facility
7 configuration and negotiation with the customer.

8 **Q. PLEASE DESCRIBE PETITIONER'S EXHIBIT 1-B.**

9 A. As mentioned previously, Petitioner's Exhibit 1-B is the form of Solar Energy Service
10 Agreement ("Service Agreement") between Duke Energy Indiana and participating
11 customers. Duke Energy Indiana will negotiate a specific agreement with each
12 participating customer to appropriately reflect the size and configuration of each system.

13 **Q. WHAT IS INCLUDED IN THE SERVICE AGREEMENT?**

14 A. The Service Agreement details the terms and conditions required to transact with the
15 Company. Included are exhibits such as the monthly payment schedule, agreement
16 termination schedule, and a production guarantee.

17 **Q. WHEN IS THE COMPANY REQUESTING THAT THE PROPOSED RIDER NO.
18 26 BE MADE EFFECTIVE?**

19 A. The Company requests Rider 26 be effective on the date approved by the Commission's
20 Energy Division after approval by the Commission of the Rider in this proceeding. The
21 Company will file a copy of the Tariff, along with a revised Electric Tariff Table of

1 Contents for Energy Division approval upon issuance of the Commission's order.

2 **V. CONCLUSION**

3 **Q. WERE PETITIONER'S EXHIBITS 1-A AND 1-B PREPARED BY YOU OR**
4 **UNDER YOUR DIRECTION?**

5 A. Yes, they were.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes, at this time.

VERIFICATION

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signed: 
Andrew S. Ritch

Dated: 9-25-18

Program Description

The program allows for eligible customers to have solar energy facilities installed on their premises to be constructed, operated, and maintained by the Company and receive the kwh output of the facility.

Availability

Available to non-residential customers who are served under one of the following Rate Schedules or Standard Contract Riders:

- Rate CS – Schedule for Commercial Electric Service
- Rate LLF - Schedule for Low Load Factor Service
- Standard Contract Rider No. 10.1 - Optional High Efficiency Total Electric Commercial Service (Applicable to Rate LLF)
- Standard Contract Rider No. 10.2 - Optional Time-Of-Use Service (Applicable to Rate LLF)
- Rate HLF, Schedule for High Load Factor Service
- Standard Contract Rider 12.2 - Optional Time-Of-Use Service (Applicable to Rate HLF), and
- Rate WP - Schedule for Water Pumping and/or Sewage Disposal

Each facility must comply with the requirements of Standard Contract Rider No. 57, Net Metering, and Standard Contract Rider No. 80, Interconnection Service. The Customer will be responsible to adhering to these requirements and meeting all obligations, including but not limited to insurance coverage and indemnification. Each facility must be on a suitable location for the service requested as determined by the Company.

Special Terms and Conditions

1. Customer and Company shall enter into a Service Agreement defining the obligations of the parties for an initial term no greater than 20 years, with renewal terms thereafter as defined in the Service Agreement. The Service Agreements shall be established under Internal Revenue Code section 7701(e) and in compliance with Indiana Code § 8-1-2.5-6.
2. Company will establish a market based price paid by Customer through negotiation, based on criteria that includes, but is not limited to, an evaluation of the customer's credit worthiness for eligibility under this program. The credit criteria and Customer eligibility shall be at the sole discretion of the Company and may impact project pricing.
3. Payment will be made monthly within the time limits established under the terms in the Service Agreement. Customers may be billed separately from their monthly electric bill.
4. Termination of the Service Agreement prior to the conclusion of the initial term shall be subject to termination provisions established under the terms in the Service Agreement.
5. Customer may assign the terms of this Service Agreement to subsequent owners of the property or building, subject to agreement by the Company.
6. Customers will not be subject to disconnection of retail energy service due to nonpayment of Service Agreement fees. Delinquent payments will be subject to the terms of the Service Agreement.

SOLAR ENERGY SERVICE AGREEMENT

THIS SOLAR ENERGY SERVICE AGREEMENT (the “**Agreement**”) is entered into by and between Provider and Customer identified below (each a “**Party**” and collectively the “**Parties**”) and shall be effective as of the date signed by both Parties (the “**Effective Date**”).

- Provider:** Duke Energy Indiana, LLC
- Customer:** [Insert full legal name]
- Purpose:** Under and subject to the terms of this Agreement, Customer is agreeing to receive from Provider, and Provider is agreeing to provide to Customer the Solar Energy Services as defined herein during the Term for and in consideration of the Monthly Payment provided in **Exhibit C**.
- Terms and Conditions:** Some of the principal terms of this Agreement are set forth on this cover page (the “**Cover Page**”). This Agreement includes all of the terms, conditions and disclosures contained in this Cover Page and **Exhibit A** through **Exhibit O****[and Schedule 6(e)]**, which are incorporated herein by reference and made a part of this Agreement.
- Definitions:** Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement. Section references contained in this Agreement shall refer to the provisions of the general terms and conditions contained in **Exhibit B**.
- Term:** The term of this Agreement (the “**Term**”) shall commence on the Commercial Operation Date and shall remain in effect for an Initial Term of [20] years as may be extended by one or more Extension Periods subject to and in accordance with Section 2 of **Exhibit B**.
- Monthly Payment** **Exhibit C** provides a schedule of Monthly Payments throughout the Term of this Agreement

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[Insert name of Customer]

Duke Energy Indiana, LLC

By: _____
Name _____
Title _____
Address _____
Phone _____
Email _____

By: _____
Name _____
Title _____
Address _____
Phone _____
Email _____

EXHIBIT A

Description of System

<p>Premises: <i>(Address or legal description of property on which the System is located)</i></p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Facility: <i>(Building(s) on which the System is located-if applicable)</i></p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Make and Model of the System's Major Components:</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Production Guaranty:</p>	<p>The guaranteed energy production of the System over the Term, including any remedies for a Production Shortfall shall be as specified in Exhibit H attached hereto.</p>
<p>Premises Ownership: <i>(If different from Customer, include name and address of Premises owner.)</i></p>	<p>Customer represents that it [] owns or [] leases the Premises.</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____</p> <p>E-mail: _____</p> <p>Attention: _____</p>
<p>Approximate System Size (DC):</p>	<p>_____ kWDC solar installation on the Facility/ Premises; final System Size to be determined after engineering review and design are complete</p>
<p>Approximate System Size (AC):</p>	<p>_____ kWAC solar installation on the Facility/ Premises; final System Size to be determined after engineering review and design are complete</p>
<p></p>	<p></p>

Expected System Structure:	<input type="checkbox"/> Ground Mount <input type="checkbox"/> Roof Mount <input type="checkbox"/> Parking Structure <input type="checkbox"/> Other [identify here] _____ _____
Easement Required:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Credit Support Required: <i>(If a Guaranty will be provided, include name and address of proposed guarantor.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Name: _____ Address: _____ _____ Phone: _____ E-mail: _____ Attention: _____
Provider Review Period: <i>(See Section 6 of Exhibit B.)</i>	Effective Date plus _____ days
Utility:	_____ _____
Provider Contact:	Duke Energy Indiana, LLC 1000 E. Main Street Plainfield, Indiana 46168 Attn: _____ Phone: 980-373-8728 Email: _____
Payment and Billing Contact:	Name: _____ Address: _____ _____ Phone: _____ E-mail: _____
Customer Notice Contact:	Name: _____ Address: _____ _____ Phone: _____ E-mail: _____

Aerial Image of Premises:	[Insert Aerial image]
Conceptual System Layout: <i>(Final System size and layout to be determined based on final engineering.)</i>	[Insert Conceptual Layout]
Description of Access Points: <i>(Showing access to Premises, Facility, and System.)</i>	[Describe preferred access to Premises, Facility, and System]
Delivery Point(s):	[Written description of Delivery Point of System Energy]
Alienability of Warranty and Maintenance Obligations:	This Agreement and any warranty or maintenance obligations hereunder may be assigned by Provider without the consent of Customer in accordance with the provisions specified in Section 31 of <u>Exhibit B</u> .

EXHIBIT B

General Terms and Conditions

1. SOLAR ENERGY SERVICES. Customer hereby engages Provider to perform the following services subject to the terms and conditions specified in this Agreement: to install, own, operate and maintain the solar photovoltaic generation system described in Exhibit A attached hereto (the “**System**”) upon Customer’s [Premises][Facility] and perform and provide the other services specified in this Agreement, including the provision of renewable electrical energy as described in paragraph 4 (collectively, the “**Solar Energy Services**”) and Provider hereby accepts such engagement subject to the terms and conditions specified in this Agreement. This Agreement is intended to constitute a service agreement under §7701(e) of the Internal Revenue Code and in compliance with Duke Energy Indiana Standard Contract Rider No. 22.

2. TERM; TERMINATION; RESCISSION RIGHT.

(a) The initial term of this Agreement shall commence on the Commercial Operation Date (as defined below), and shall continue, unless earlier terminated in accordance with its terms, for a period of [twenty (20)] years (the “**Initial Term**”). Thereafter, this Agreement shall automatically be extended for additional one-year periods, up to a maximum of ten (10) one-year extensions (each one-year extension period being referred to as an “**Extension Period**”), unless terminated by either Party as provided herein. Either Party may terminate this Agreement at the end of the Initial Term or any Extension Period by giving the other Party written notice at least six (6) months prior to the end of the Initial Term or applicable Extension Period. Customer may terminate this Agreement prior to the expiration of the Term upon payment to Provider of the termination fee specified in Exhibit F attached hereto (“**Termination Fee**”) corresponding to the date of termination. As used herein, “**Term**” shall mean the Initial Term and any Extension Period(s). As used herein the term “**Commercial Operation Date**” shall mean the date Provider gives Customer written notice that the System is mechanically complete and capable of providing electric energy to the delivery point identified in Exhibit A.

(b) Notwithstanding anything herein to the contrary, Customer may rescind this Agreement, without any penalty or obligation, within three (3) business days from the Effective Date as provided in Exhibit I hereto.

3. MONTHLY PAYMENT. For and in consideration of the Solar Energy Services provided to Customer herein, Customer shall pay to Provider a monthly payment during the Term of the Agreement in the amounts specified in Exhibit C, attached hereto and incorporated herein (“**Monthly Payment**”). Commencing with the month immediately following the Commercial Operation Date, the Provider shall invoice Customer monthly for the Monthly Payment. The invoice shall be due and payable to Provider on or before [*insert payment date*] of each month at the address specified in the invoice.

4. USE OF SYSTEM. The System shall be installed and operated on the Premises by Provider for the sole intended purpose of providing solar generated electricity to the Customer at

the Premises. Customer shall be entitled to one hundred percent (100%) of the output of electricity generated by the System, less that associated with Station Power. In no event shall Customer be permitted to operate the System. As used herein "Station Power" means the electricity generated by the System and, whether metered or unmetered, used on-site to supply the System's auxiliary load and parasitic load and/or for powering the electric generation equipment.

5. INSTALLATION; OPERATION AND MAINTENANCE; USE OF CONTRACTORS.

(a) Installation of System. Subject to the conditions set forth in Section 6 below, Provider shall construct, own, and install the System at a location on the [Premises][Facility], to be mutually agreed upon by Provider and Customer, in accordance with a System design to be reviewed by Customer prior to installation. Provider shall use commercially reasonable efforts to obtain (i) any zoning, land use, electrical and building permit required to construct, install and operate the System; and (ii) any agreements and approvals necessary in order to interconnect the System to the electrical system at the Premises and/or the Provider's electric distribution system.

(b) Operation and Routine Maintenance of the System. Subject to Section 28, Provider shall be responsible for operation, and routine maintenance and repair of the System, at Provider's sole cost and expense; provided however, Customer shall reimburse Provider for the cost of any repairs to the System resulting from Customer's negligence, willful misconduct or breach of this Agreement. Provider shall operate, maintain and repair the System in accordance with all applicable laws, including applicable requirements of the National Electric Safety Code, the National Electrical Code, and the Utility's interconnection standards if applicable.

(c) Use of Contractors and Subcontractors. It is understood and agreed that Provider shall be permitted to use contractors to perform its obligations under this Agreement. Notwithstanding the use of contractors engaged by Provider, Provider shall remain fully liable for the performance of its obligations and such delegation shall not relieve Provider from any of Provider's obligations or liabilities under this Agreement. Provider shall cause the contractor to comply with the terms and conditions of this Agreement in the performance of any work performed hereunder.

6. CONDITIONS TO PROVIDER'S OBLIGATIONS. Provider's obligations under this Agreement are conditioned on the completion of the following conditions to Provider's satisfaction within [date to be added] after the Effective Date (the "**Provider's Review Period**"):

(a) Completion of a physical inspection of the Premises by Provider including, if applicable, geotechnical work and real estate due diligence to confirm the suitability of the Premises for the System;

(b) Approval by Provider and its lender if applicable, of (A) the construction agreement (if any) for the engineering, procurement, construction and installation of the System, and (B) the credit quality of Customer, or its credit support provider as applicable;

(c) With the assistance of Customer as contemplated in this Agreement, receipt of all necessary zoning, land use, electrical, and building permits;

(d) Execution of all necessary agreements with the Utility for interconnection of the System to the Facility electrical system and/or the Utility's electric distribution system;

(e) **[(If required on a case by case basis) Execution by Provider and the Premises owner of a site lease in the form of Schedule 6(e) (the "Site Lease") wherein Premises owner shall grant Provider an exclusive lease for a period of time expiring as established in the Site Lease to access, construct, install, operate, maintain, repair, replace and remove the System on the Premises and to perform Provider's obligations under this Agreement.]**

(f) Provider's receipt of (i) written confirmation to its satisfaction from any person holding a mortgage, lien, or other encumbrance over the Premises, that such person will recognize Provider's rights under this Agreement for as long as Provider is not in default hereunder; (ii) if Customer does not own the Premises, upon request of Provider, Customer shall obtain and deliver to Provider all consents from the owner of the Premises to grant the License (as defined below) and any required Easements, as determined by Provider in its discretion. As used herein the term "Easement" shall mean an easement suitable for recording in the state in which the Premises is located in a form acceptable to Provider; and

(g) Provider's receipt of a signed and notarized original of the Memorandum of License (as defined herein) or fully executed and notarized original of the Easement (if applicable).

(h) Failure of Conditions. If any of the conditions listed in subsections (a) through (g) of Section 6 are not satisfied by the end of Provider's Review Period, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Provider may terminate this Agreement upon 10 days written notice to Customer, and neither Party shall have liability for costs or damages or triggering a default under this Agreement incurred by the other Party.

7. METERING. Provider shall design, construct, install, operate, calibrate and maintain the metering devices needed to measure the electric energy generated by the System by means of solar generation at Provider's cost and expense. Metering shall be compatible with MV-90 interrogation software or Itron Enterprise Edition software and both Parties shall have unlimited rights to interrogate the meter for the System. The metering devices shall provide Customer and the Utility the ability to continuously monitor generation and unit status from the System. Provider shall test the metering devices annually at its expense. Provider shall notify Customer prior to performing such tests and Customer shall be allowed to have a representative present to witness such tests. Metering equipment that fails to register, or is found upon testing to be inaccurate by more than 1%, shall be repaired, adjusted or replaced by Provider, at its expense.

8. LICENSE TO PREMISES; SYSTEM ACCESS BY PROVIDER.

(a) Customer hereby grants to Provider and to Provider's agents, employees, contractors and assigns an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under, and across the Premises for the purposes of (i)

installing, constructing, operating, owning, accessing, removing and replacing the System on the area(s) depicted on **Exhibit D** attached to this Agreement which area(s) shall be referred to herein (collectively, as applicable) as the “**License Area**”; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing and using electric lines and equipment, including inverters and meters necessary to interconnect the System to Customer’s electric system at the Premises, to the Utility’s electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation or operation of the System. Provider shall notify Customer prior to entering the Premises except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is 180 days following the date of expiration (as may be extended or renewed) or termination of this Agreement (the “**License Term**”). During the License Term, Customer shall ensure that Provider’s rights under the License and Provider’s access to the Premises and the System are preserved and protected. Customer shall not interfere with nor shall Customer permit any third parties to interfere with such rights or access. At request of Provider, Customer shall execute a memorandum of license in a form reasonably acceptable to Provider (the “**Memorandum of License**”).

(b) In the event Provider must access the Premises, excepting emergencies, it agrees to use commercially reasonable efforts to schedule access during a mutually agreeable time. Customer agrees to comply with any safety and security requirements that may be applicable to the Premises.

9. **CUSTOMER’S OBLIGATION TO MAINTAIN THE PREMISES.** Customer shall maintain the [Premises][and the Facility] in good condition, reasonable wear and tear excepted. Customer shall not take or permit any action on or about the [Premises] [or the Facility] that would cause the System not to operate as intended. Customer shall notify Provider if the System is not operating as intended.

10. **INSOLATION.** Customer understands that unobstructed access to sunlight (“**Insolation**”) is essential to Provider’s performance of its obligations and a material term of this Agreement. Customer shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s Insolation. If Customer becomes aware of any activity or condition that could diminish the Insolation of the System, Customer shall notify Provider immediately and shall cooperate with Provider in preserving the System’s existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Provider, that such injury may not be adequately compensated by an award of money damages, and that Provider is entitled to seek specific enforcement of this Section 10 against Customer.

11. **DATA LINE.** If requested by Provider, Customer shall provide Provider access to the Customer’s existing (at the time of the request) high-speed internet data line during the Term to enable Provider to record the Energy; provided, that if Customer does not have any high-speed internet data line at the time of Provider’s request, Customer and Provider shall cooperate, at Provider’s reasonable cost and expense, to install and provide a high-speed internet data line.

12. **NO WARRANTY. OTHER THAN THE PRODUCTION GUARANTY SPECIFIED IN EXHIBIT H ATTACHED HERETO, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT**

LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY TO THIS AGREEMENT OR ANY SERVICES PERFORMED HEREUNDER. The remedies set forth in this Agreement shall be Customer's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, including any Services performed hereunder, whether arising in contract, tort (including negligence), strict liability, or otherwise.

13. GOVERNMENTAL APPROVALS. It is understood and agreed that Provider's obligations under this Agreement are contingent upon its obtaining, after the execution date of this Agreement, all of the certificates, permits and other approvals that may be required by any Federal, State or Local authorities (collectively the "**Governmental Approvals**") in order to permit construction, operation and use of the System as set forth herein. Customer shall cooperate with Provider in its effort to obtain such Governmental Approvals and shall take no action which would adversely affect the status of the Premises with respect to the proposed use of the System. In the event that any of such applications for such Governmental Approvals should be finally rejected or Provider determines that such Governmental Approvals may not be obtained in a timely and commercially reasonable manner or any Governmental Approval issued to Provider is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or that Provider determines that the site is no longer technically compatible for its use or that Customer, in its sole discretion, will be unable to use the System for its intended purposes, Provider shall have the right to terminate this Agreement without liability. Notice of Provider's exercise of its right to terminate shall be given to Lessee in writing.

14. INDEMNIFICATION. Each Party shall indemnify and hold the other harmless against any third party claim of liability or loss from bodily injury/death or property damage resulting from or arising out of the use and occupancy of the System or Premises by the Party, its servants or agents, excepting, however, such claims or damages as may be due to or caused by the acts or omissions of the other Party, or its servants or agents. Provider shall indemnify and hold harmless Customer from and against any third party claim of liability or loss from bodily injury/death or property damage resulting from or arising out of Provider's installation, operation, maintenance, repair or removal of the System, except to the extent liability is due to the negligence, gross negligence or willful misconduct of Customer.

15. FORCE MAJEURE. The term "**Force Majeure**," as used in this Agreement, means causes or events (i) beyond the reasonable control of the Party claiming Force Majeure, (ii) that could not be reasonably avoided, prevented, or removed by a Party's use of commercially reasonable efforts, and (iii) without the fault or negligence of the Party claiming Force Majeure. So long as the requirements of the preceding sentence are met, Force Majeure shall include, without limitation, the failure or interruption of the production, delivery or acceptance of electricity or performance of the Solar Energy Services due to: (i) acts of God, sudden actions of the elements, including floods, earthquakes, volcanic activity, hurricanes, lightning, hail, ice storms, tornadoes or excessive winds; (ii) sabotage; vandalism beyond that which could reasonably be prevented by the claiming Party; (iii) terrorism, war, riots, fire, explosion, blockades, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); (iv) actions or inactions by any U.S. governmental authority with jurisdiction over the claiming Party taken after the date hereof but only if such actions, or inactions prevent or delay

performance of a Party hereunder (and provided that such actions or inactions are not the result of such Party's failure to comply with applicable law); (v) unavailability of electricity from the grid; and (vi) inability, despite due diligence, to obtain any equipment (including solar panels), supplies or products, licenses, permits, or approvals required by any U.S. governmental authority with jurisdiction over the claiming Party and the issuance of any order, injunction, or other legal or equitable decree interfering with the performance of a Party's obligations hereunder.

(a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

(i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

(c) Termination Due to Force Majeure. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty (360) days from its occurrence or inception, as noticed pursuant to this Section 15, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty (360) day period, terminate this Agreement upon written notice to the non-claiming Party, without further obligation by either Party other than costs and balances incurred prior to the effective date of such termination which remain unpaid. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty (360) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. Upon termination of this Agreement as a result of Force majeure in accordance with this section 15(c), Provider shall remove the System from the Premises within **[one hundred twenty (120)]** days of termination, at Provider's expense.

16. INSURANCE. At all times during the Term, Provider and Customer shall maintain the following insurance and comply with the following requirements:

(a) Provider's Insurance. Provider and/or its contractors shall maintain (A) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (B) employer's liability insurance with coverage of at least \$1,000,000, (C) property coverage on the System, and (D) workers' compensation insurance as required by law. Provider reserves the right to self-insure for all insurance coverages and obligations under this Agreement.

(b) Customer's Insurance. Customer shall maintain (A) property coverage on the Premises [and the Facility], (B) commercial general liability insurance with coverage of at least \$1,000,000 available per occurrence and \$2,000,000 annual aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property and explosion, collapse, and underground hazard coverage, and (C) worker's compensation insurance as required by law.

(c) Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

(d) Deductibles. Each Party shall be responsible for the payment of its own deductibles and/or retentions.

(e) Waiver of Subrogation. Provider and Customer each release each other and their respective principals, employees, agents, and representatives, from any claims for damage or injury to any person, the System, or to the Premises, Customer's other assets that are on the Premises or to the System caused by, or that result from, risks insured against under any property or casualty insurance policies carried by the Parties (or required to be maintained under the terms of this Agreement or any self-insurance program) and in force at the time of any such damage or claim (or which should have been in force under the terms of this Agreement). Provider and Customer shall, and shall cause each such insurance policy obtained by them, to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any claims or damage covered by any such policy, as permitted by law. Neither Provider nor Customer shall be liable to the other for any damage caused by fire, collapse or any of the risks insured against under any insurance coverage required by this Section 16.

(f) Additional Insured. Customer shall include Provider and its directors, officers, managers, members, employees, affiliates and subcontractors as additional insureds on all commercial general liability insurance policies with respect to Customer's acts, omissions, or operations, whether in whole or in part.

All insurance policies provided and maintained by Customer shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, or operations of the Customer, whether in whole or in part, and without right of contribution from any other insurance, or coverage available to Provider and its affiliates; and (iii) contain standard cross liability clause, separation of insured and severability of interest provisions except with respect to the limits of the insurer's liability. All insurance policies shall provide that the insurer will provide at least thirty

(30) days' written notice to the Customer, who in turn shall provide at least thirty (30) days' written notice to Provider prior to cancellation or non-renewal of any policy (or ten (10) days' notice in the case of non-payment of premium).

17. REMOVAL OF SYSTEM UPON EXPIRATION OR TERMINATION. Upon the expiration or earlier termination of this Agreement, Provider, shall, within [**one hundred twenty (120)**] days, remove the System from the [Premises] [Facility].

Customer agrees and acknowledges that the System shall be deemed conclusively for the purposes of this Agreement to be personal property (and not fixtures) and shall remain the personal property of Provider and Provider shall have the right to remove the same or to direct the removal of the System, whether or not said items are considered fixtures and attachments to real property under applicable law.

18. TITLE TO PREMISES. Customer covenants that Customer is (and will be throughout the Term) seized of good and sufficient title or leasehold interest in the Premises and has full authority to enter into and execute this Agreement and to perform its obligations hereunder. Customer further covenants that there are no liens, judgments or impediments of title affecting the Premises or affecting Customer's title or leasehold interest to the same except as set forth on Exhibit E attached hereto, and that there are no covenants, easements or restrictions which prevent the use of the System or the Premises [Facility] by the Customer as contemplated in this Agreement. To the extent that there is(are) existing mortgage(s) or any other interests superior to this Agreement affecting the Premises, or Customer's leasehold interest in the Premises, Provider and Customer shall cooperate and make best efforts in promptly causing each such mortgagee and/or other interest holder (as applicable) to execute and deliver an agreement subordinating or releasing such superior interests to Provider's rights under this Agreement in a form reasonably satisfactory to Provider and Customer's mortgagee and/or other interest holder.

19. TAXES AND INCENTIVES. Provider shall pay all taxes due and payable for the System. Customer shall pay all ad valorem taxes due and payable on the Premises and any other taxes on Customer's personal property. In addition, Provider shall be treated for income tax purposes as the owner of the System and in computing its income tax liabilities shall be: (i) entitled to claim all items of deduction (including accelerated depreciation under Section 168 of the Code), loss, credit (including the energy credit under Section 48 of the Internal Revenue Code of 1986, as amended (the "**Code**")), and similar income tax benefits relating to ownership of the System as owners of similar properties are entitled to under the Code and applicable state tax laws in effect on the date hereof; and (ii) responsible for reporting all items of income, gain, and similar income tax burdens as owners of similar properties are responsible for under the Code and applicable state tax laws in effect on the date hereof.

20. VACATION OR TRANSFER OF THE PREMISES. If Customer ceases to conduct business operations at or vacates the Premises, or sells or assigns its interest in the Premises or a leasehold in the Premises, as applicable, prior to the expiration of the Initial Term or Extension Period, as applicable, Customer shall have the following options: (i) with the consent of Provider (which shall not be unreasonably withheld), Customer may assign the Agreement to the new owner of the Premises or holder of the leasehold interest, provided the new owner of the Premises or holder of the leasehold interest signs an agreement (in the form approved by Provider) assuming

all of Customer's rights and obligations under this Agreement; or (ii) terminate the Agreement upon payment of the Termination Fee corresponding to the date of termination as provided in Section 2 and Exhibit F. Customer shall provide Provider not less than 90 days prior written notice of the intended cessation of business operations or vacation of the Premises, or sale or assignment of its interest in the Premises or a leasehold in the Premises, as applicable, which notice shall identify the name of the new owner if Customer proposes to transfer the Agreement. Customer understands that any new owner of the Premises or leasehold to whom Customer desires to transfer the Agreement must, among other things, satisfy Provider's credit requirements.

21. LIENS. Customer shall not directly or indirectly cause, create, incur, assume, or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature on or with respect to the System or any interest therein. Customer shall immediately notify Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance, or other claim, shall promptly cause the same to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance, or other claim. Notwithstanding anything else herein to the contrary, Provider may grant a lien on the System (in accordance with Section 22) and may assign, mortgage, pledge, or otherwise collaterally assign its interests in this Agreement (in accordance with Section 32), and the System to any lender or financier.

22. OWNERSHIP OF SYSTEM; WAIVER OF CUSTOMER'S LIEN. It is the intention of the Parties that the System shall at all times be owned by and remain Provider's personal property and/or trade fixtures and shall not be "real fixtures." Customer waives any lien rights it may have concerning the System and Provider has the right to remove all or any portion(s) of the System at any time.

23. CREDIT AND RELATED PROVISIONS.

(a) Performance Assurance Requirements. Subject to Section 23(b) below, no later than five (5) business days after the Effective Date, Customer shall provide and deliver to Provider Performance Assurance in the amount of [\$_____] as set forth in the below table corresponding to the applicable period during the Term of this Agreement [Insert Annual Performance Assurance Table]

(b) Unsecured Credit For Creditworthy Customers. If Customer is Creditworthy and throughout the Term is not in default of any provisions under this Agreement, the Customer shall be excused from the requirement to post Performance Assurance as required under Section 23(a) above, as long as it remains Creditworthy. If at any time during the Term of this Agreement, Customer, or its Guarantor, ceases to be Creditworthy due to a change in its Credit Rating or Provider's reasonable determination that the Customer or Guarantor is no longer Creditworthy, then Customer will notify Provider of such change in its credit status and Customer shall provide Performance Assurance to Provider in the amounts required under Section 23(a), within five (5) Business Days after such change in its Credit Rating or notice from Provider that the Customer or Guarantor is no longer Creditworthy.

(c) Definitions used in this Section.

(i) “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.

(ii) “Creditworthy” or “Creditworthiness” - means (i) a person or entity with an investment grade Credit Rating from at least one (1) of the Rating Agencies such that its senior unsecured debt (or issuer rating if such person or entity has no senior unsecured debt rating) is rated at least BBB- by S&P, if rated by S&P, or Baa3 by Moody’s, if rated by Moody’s, or (ii) has satisfactory and verifiable creditworthiness determined in Provider’s sole discretion. Notwithstanding the foregoing, a person or entity that does not have an investment grade Credit Rating may submit complete audited financial statements (or substantially equivalent information certified by an appropriate officer of such entity) for review by the Provider, which shall make determinations throughout the Term of the entity’s creditworthiness on a commercially reasonable basis for purposes of this Agreement. Unaudited or incomplete financial information will negatively impact the determination of creditworthiness.

(iii) “Guarantor” means any Creditworthy person or entity having the authority and agreeing to guarantee the Customer’s obligations under this Agreement and which is otherwise acceptable to Provider in its sole discretion.

(iv) “Guaranty” means a parent company guaranty, in substantially the form set forth in Exhibit N attached hereto, provided by a Guarantor in favor of Provider guaranteeing the obligations of Customer under this Agreement.

(v) “Letter(s) of Credit” means one or more irrevocable standby letters of credit in the form of Exhibit O attached hereto, issued by a U.S. commercial bank or other financial institution reasonably acceptable to Provider, which is not an Affiliate of Customer, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody’s, permitting Provider to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) business days prior to its stated expiration date, and is otherwise acceptable in all respects to Provider in its sole discretion.

(vi) “Moody’s” means Moody’s Investors Service, Inc. or any successor-rating agency thereto.

(vii) “Rating Agency” or “Rating Agencies” - means the rating entities of S&P or Moody’s.

(viii) “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit or a Guaranty that is acceptable to Provider in its sole discretion, in each case that meets the requirements set forth in this Agreement provided by Customer to Provider for the benefit of Provider pursuant to this Agreement, as credit support, adequate assurances, and security to secure Customer’s performance under this Agreement.

(ix) “S&P” means Standard & Poor’s Ratings Services, Inc. or any successor-rating agency thereto.

24. FINANCIAL DISCLOSURES. Customer shall timely provide to Provider financial information of Customer as follows: (i) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Customer's annual report containing audited consolidated financial statements for such fiscal year; and, (ii) upon request of Provider, a copy of Customer's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Customer attesting to their accuracy. The statements shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law. If such information is available on a publicly available web site, then this requirement shall be deemed to be satisfied. If Customer does not have audited financial statements, Customer shall deliver to Provider financial statements in a form acceptable to Provider and certified by a financial officer of Customer.

25. PURCHASE OF SYSTEM. Upon expiration of the then applicable Term (the "**Option Purchase Date**"), and provided Customer is not in default under this Agreement, Customer shall have the option of purchasing the System from Provider for its Good Standing Purchase Price in accordance with Exhibit G attached hereto. Customer must provide notice in writing to Provider of its intent to purchase at least 90 days and not more than 180 days prior to the Option Purchase Date, and the purchase shall be completed prior to or effective as of the Option Purchase Date. Any such purchase shall be on an "as-is, where-is basis" free and clear of any liens attributable to payments owed to any third parties by Provider. Customer shall pay any and all sales and use and other transfer taxes due on such transfer. Provider shall not be required to make, and may specifically disclaim, any representation or warranty as to the condition of such System and other matters (except that Provider shall warrant that the System is free and clear of any liens attributable to Provider). At Customer's expense, Provider shall promptly execute and deliver to Customer such statements of termination as reasonably may be required in order to release or terminate any interest of Provider in and to the System and the collateral, and perform such other actions as Customer may reasonably request to effectuate the foregoing. Upon purchase of the System, Customer shall take title to the System and assume complete responsibility for the System, and Provider shall have no further liabilities or obligations hereunder. Notwithstanding anything herein to the contrary, the Customer's option to purchase set forth in this Section 25 and Exhibit G shall not be applicable in the case of an early termination of this Agreement.

26. DEFAULT, REMEDIES AND DAMAGES.

(a) Default. Either Party that fails to perform under this Agreement in the manner listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**," the other Party shall be deemed to be the "**Non-Defaulting Party**," and each event of default shall be a "**Default Event**":

(i) Failure by Customer to make the Monthly Payment when due and such failure continues for a period of three (3) days thereafter ("**Payment Default**");

(ii) Failure by a Party to substantially perform any of its obligations under this Agreement (other than payment of the Monthly Payment by Customer) within thirty (30) days after receipt of written notice from the Non-Defaulting Party demanding such cure; provided, the Defaulting Party shall have such extended period as may be required beyond the thirty (30) days

if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure and the Defaulting Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion;

(iii) If any representation or covenant of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; or

(iv) Customer becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to Customer which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure.

(b) Remedies.

(i) Remedies for Payment Default. If a Payment Default occurs, Provider may suspend performance of its obligations under this Agreement, which suspension right shall include, without limitation, the right for Provider to disconnect the System until receipt by Provider of the applicable overdue Monthly Payment. Further, Provider may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five days prior written notice to Customer, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.

(ii) Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

(c) Damages Upon Termination for Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the following shall apply:

(i) Customer Default. If Customer is the Defaulting Party and Provider terminates this Agreement prior to the expiration of the Term, Customer shall pay to Provider, as liquidated damages and not as a penalty, the Termination Fee in Exhibit F corresponding to the date of termination, plus all other amounts due and owing by Customer under this Agreement at the date of termination. The Parties agree that actual damages to Provider for the loss of Monthly Payments in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Customer would be difficult to ascertain, and the termination payment set forth herein is a reasonable approximation of the damages suffered by Provider for loss of Monthly

Payments as a result of such termination. Upon such termination, the System will remain the personal property of Provider and be subject to removal as provided in Section 17.

(ii) Provider Default. If Provider is the Defaulting Party and Customer terminates this Agreement, Provider shall, at its sole cost and expense, remove the System from the Premises.

(iii) Mitigation. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Defaulting Event.

(iv) EXCEPT WITH RESPECT TO INDEMNIFICATION FOR THIRD PARTY CLAIMS PURSUANT TO SECTION 14 HEREUNDER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, LOST INCOME, LOST PROFITS, LOST BUSINESS OR ANY BUSINESS INTERRUPTION WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS OR RELATIONSHIP BETWEEN THE PARTIES CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF ANY PRIOR COURSE OF DEALING BETWEEN THE PARTIES.

27. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TOTAL CUMULATIVE LIABILITY OF PROVIDER FOR ANY AND ALL CLAIMS OR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER STATED IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY) AT ANY TIME SHALL NOT EXCEED \$[*to be determined*] IN THE AGGREGATE; PROVIDED, THAT THIS LIMITATION SHALL NOT APPLY TO ANY DAMAGES SUSTAINED BY CUSTOMER AS A RESULT OF (I) THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF PROVIDER OR ITS EMPLOYEES OR AUTHORIZED AGENTS OR (II) ANY INDEMNIFICATION CLAIM UNDER SECTION 14 RESULTING FROM THIRD PARTY DEATH OR BODILY INJURY.

28. CASUALTY; CONDEMNATION.

(a) CASUALTY. In the event that the System or any portions thereof are damaged or destroyed by fire or other casualty during the Term, and if in Provider's sole judgment the damage is of such nature or extent that it is uneconomical to repair or restore the System, then Provider may terminate this Agreement by written notice to Customer. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement. Notwithstanding the foregoing, Customer shall be responsible for and shall be liable to Provider for any damage or destruction of the System to the extent caused by the negligence or willful misconduct of Customer, its employees, agents or contractors.

(b) CONDEMNATION. Customer shall give Provider immediate notice of any condemnation action threatened or instituted affecting the Premises. In the event of any condemnation of all or any portion(s) of the Premises which may reasonably be expected to disrupt operation of the System at the Premises for more than forty-five (45) days, Provider or Customer may terminate this Agreement upon fifteen (15) days written notice to the other Party. Provider may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the System and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement.

29. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed to the Party at the address specified in Exhibit A (or any other address that the Party to be notified may have designated to the sender by like notice).

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

30. INTEGRATION. It is agreed and understood that this Agreement (including its Exhibits) contains all agreements, promises and understandings between the Provider and Customer and that no verbal or oral agreements, promises or understandings shall be binding upon either the Provider or Customer in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

31. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Indiana, without reference to its conflicts of laws provisions.

32. ASSIGNMENT.

(a) Restriction of Assignments and Change of Control by Customer.

(i) Assignment. Customer shall not assign this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Provider's prior written consent, which shall not be unreasonably withheld. Customer shall give Provider at least thirty (30) days prior written notice of any requested assignment. Any permitted assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including any credit

requirements, and shall deliver to Customer any required Performance Assurance and enforceability assurance as Provider may reasonably request.

(ii) Change of Control. Any Change of Control of Customer (however this Change of Control occurs) shall require the prior written consent of Provider, which shall not be unreasonably withheld. Customer shall give Provider at least thirty (30) days prior written notice of any such requested consent to a Change of Control.

(iii) No Release. Notwithstanding the foregoing, any assignment or Change of Control will not release Customer of its obligations hereunder, unless Provider agrees in writing to such a release. Any assignment in violation of this provision shall be void.

(b) Provider's Assignment Without Consent. This Agreement may be sold, assigned, pledged or transferred by Provider, without any approval or consent of the Customer as follows: (i) to a purchaser of the System or of all or substantially all of the assets of Provider; (ii) to an Affiliate of Provider; (iii) in connection with a merger of Provider with another Person or any other transaction resulting in a Change of Control of Provider (iv) in connection with a contribution or any other transaction undertaken to facilitate an investment in Provider by a Tax Equity Investor as provided in subparagraph (c) below; or (v) in connection with the pledge or grant of a security interest in the System and/or this Agreement by Provider to any lender (including any Project Lender) or investor; provided however, in the case of items (i), (ii), (iii) and Upon any permitted assignment of this Agreement by Provider (other than pursuant to Section 32(b)(iv)) and such assignee's written assumption of this Agreement, the Provider shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption. Additionally, Provider may, upon notice to Customer, grant a security interest in the System, and may collaterally assign the System to any lender or investor (including any Project Lender), including its successors or assigns, upon the condition that all rights acquired under such security interest or collateral assignment shall, except as expressly provided otherwise herein, be subject on a going forward basis after such rights are acquired to the covenants, conditions and restrictions set forth in this Agreement. In the event that Provider desires to grant any such security interest or grant such collateral assignment, Customer shall execute a commercially reasonable form of consent to such financing as may be reasonably required by the secured parties.

(c) Cooperation with Tax Equity Investor. If any Person proposes to make an investment in Provider or any of Provider's Affiliates or any successor or permitted assignee of Provider and, as a result of such investment, such Person would become a Tax Equity Investor, upon receipt of a written request from Provider or any such Person, Customer shall negotiate, execute, or arrange for the delivery of such certificates, opinions and other documents as may be reasonably necessary at Provider's expense in order for Provider to consummate the investment by such Person in Provider or any of Provider's Affiliates or any successor or permitted assignee of Provider or any of Provider's Affiliates. Provider shall reimburse, or shall cause the Tax Equity Investor to reimburse, Customer for the incremental, direct expenses (including the reasonable fees and expenses of counsel) incurred by Customer in the preparation, negotiation, execution and/or delivery of any documents requested by Provider or the Tax Equity Investor, and provided by Customer, pursuant to this Section 32.

(d) The following definitions shall apply for purposes of this Section 32:

(i) “**Affiliate**” means for any specific Person, any other Person directly or indirectly controlling or controlled by or under common control with such specified Person. For purposes of this definition, “control” when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it is assumed that the direct or indirect owner of fifty percent (50%) or more of the outstanding stock or other equity interest of a Person has “control” of such Person; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

(ii) “**Change of Control**” means for any specific Person any transaction or series of related transactions, which if consummated, would result in such Person being an Affiliate of another ultimate parent entity immediately after such transaction.

(iii) “**Financing Documents**” means the documents associated with any Tax Equity Financing and the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing for the System, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Provider in connection with development, construction, ownership, leasing, operation or maintenance of the System.

(iv) “**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association, or government entity.

(v) “**Project Lender**” means any Person or successors in interest or assignees providing direct or indirect development, bridge, construction, permanent debt financing, Tax Equity Financing, refinancing or extending credit (including any financing lease) to Provider or Provider’s Affiliates, including any Tax Equity Investor.

(vi) “**Tax Equity Financing**” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by Tax credits and/or Tax depreciation (each a “**Tax Equity Investor**”) and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

(vii) “**Taxes**” means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including but not limited to ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover,

use or value-added taxes, payroll, unemployment, and any and all related items of withholding, deficiency, penalty, addition to tax, interest or assessment.

33. CONFIDENTIALITY.

(a) Confidential Information. Except as otherwise set forth in this Agreement, neither Party shall publish, disclose, or otherwise divulge any term or condition of this Agreement and, without limitation, any information relating to any transaction or documents exchanged between the Parties in connection with this Agreement (such information, the “**Confidential Information**”) to a third person (other than the Party’s employees, affiliates, lenders, counsel, accountants, advisors, or potential assignees (throughout assignment, merger, etc.) who have a need to know such information and have agreed to keep such terms confidential), at any time during and for one (1) year after the expiration or early termination of this Agreement, without the other Party’s prior written consent. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief) to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Non-Confidential. The following shall not be considered Confidential Information, and receiving Party shall not be limited in the use or disclosure of the following information: (a) information that is or becomes part of the public domain through no act or omission of receiving Party; (b) information that demonstrably was known or was in the possession of receiving Party without obligation to maintain confidentiality prior to the Effective Date of this Agreement; (c) information that is subsequently rightly received by receiving Party from a third party who is not bound to maintain such information as confidential; (d) information independently developed by the receiving Party without reference to the Confidential Information received under this Agreement; and/or, (e) information required to be disclosed to meet compliance obligations to regulatory commissions/authorities.

(c) Return of Confidential Information. Upon request of disclosing Party, receiving Party shall either (i) return the Confidential Information, including all copies, or (ii) destroy the Confidential Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Confidential Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, “**Back-Up Tapes**”). Notwithstanding the terms of this Agreement, in no event shall the receiving Party be required to destroy Confidential Information stored on Back-Up Tapes; provided, however, any Confidential Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Parties agree that receiving party may retain one (1) copy of such Confidential Information in receiving Party’s files for audit and compliance purposes for the duration of its existence; provided, however, such Confidential Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

(d) Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may disclose Confidential Information in response to a court order, in connection

with any court or regulatory proceeding, or as otherwise required by any requirement of law. Such disclosure shall not terminate the obligations of confidentiality unless the Confidential Information thereafter falls within one of the exclusions specified in this Agreement. To the extent the disclosure of Confidential Information is requested or compelled as set forth above, the receiving Party agrees, if legally permissible, to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief. If such protective order or other appropriate remedy is not sought and obtained within at least ten (10) days of receiving Party's notice (or such shorter period specified in the notice if required under applicable law), receiving Party shall disclose only that portion of the Confidential Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.

34. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

35. SUBMISSION OF AGREEMENT. The submission of this Agreement for examination does not constitute an offer to install the System or perform the Services and this Agreement becomes effective only upon the full execution and delivery of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

36. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

37. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

38. PUBLICITY. Provider and Customer share a common desire to generate favorable publicity regarding the System and their association with it, and agree that they may, from time-to-time, issue press releases regarding the System and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, completed review of press releases proposed to be issued by the other Party by no later than ten (10) business days after submission by such other Party. Each of Provider and Customer agrees that it shall not issue any press release regarding the System without the prior consent of the other, and each party agrees not to unreasonably withhold or delay any such consent.

[Remainder of page left intentionally blank]

EXHIBIT C

Monthly Payment

The schedule of Monthly Payments, additional charges and total of such payments during the Term are set forth below.

Monthly Payments

<u>Year 1:</u> [] monthly payments of	\$[_____]
<u>Year 2:</u> 12 monthly payments of	\$[_____]
<u>Year 3:</u> 12 monthly payments of	\$[_____]
<u>Year 4:</u> 12 monthly payments of	\$[_____]
<u>Year 5:</u> 12 monthly payments of	\$[_____]
<u>Year 6:</u> 12 monthly payments of	\$[_____]
<u>Year 7:</u> 12 monthly payments of	\$[_____]
<u>Year 8:</u> 12 monthly payments of	\$[_____]
<u>Year 9:</u> 12 monthly payments of	\$[_____]
<u>Year 10:</u> 12 monthly payments of	\$[_____]
<u>Year 11:</u> 12 monthly payments of	\$[_____]
<u>Year 12:</u> 12 monthly payments of	\$[_____]
<u>Year 13:</u> 12 monthly payments of	\$[_____]
<u>Year 14:</u> 12 monthly payments of	\$[_____]
<u>Year 15:</u> 12 monthly payments of	\$[_____]
<u>Year 16:</u> 12 monthly payments of	\$[_____]
<u>Year 17:</u> 12 monthly payments of	\$[_____]
<u>Year 18:</u> 12 monthly payments of	\$[_____]
<u>Year 19:</u> 12 monthly payments of	\$[_____]
<u>Year 20:</u> 12 monthly payments of	\$[_____]
Total Monthly Payments	\$[_____]. ^e

^e means estimate, inclusive of sales and use tax.

The total cost to the Customer under the Agreement for the System during the Term is as follows:

[\$_____ insert amount on a case by case basis]

[Identify any state or federal tax incentives used in the calculation of the lease payments to be completed on a case by case basis as applicable]

EXHIBIT D

[Description of License Area]

EXHIBIT E

[List of liens, judgments or impediments on title]

[To be supplied by Customer]

EXHIBIT F

Termination Fee

<u>Year</u>	<u>Termination Fee</u>
1	_____
2	_____
3	_____
4	_____
5	_____
6	_____
7	_____
8	_____
9	_____
10	_____
11	_____
12	_____
13	_____
14	_____
15	_____
16	_____
17	_____
18	_____
19	_____
20	_____
Extension Period	_____

EXHIBIT G

Purchase of System by Customer

If Customer exercises its purchase option provided in Section 25 above, the purchase price for such System shall be the greater of (i) \$ _____, or (ii) the Fair Market Value of the System as provided below (such price, the “**Good Standing Purchase Price**”).

The Fair Market Value of the System will be the value determined by the mutual agreement of the Parties within the 30 days immediately following the Customer’s delivery of notice of its intent to purchase the System pursuant to Section 25. If the Parties cannot agree on the Fair Market Value within such period of time, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the U.S. commercial and industrial solar energy industry to value the System. If the Parties cannot agree on the selection of such an appraiser, then each Party shall promptly propose an appraiser and direct those appraisers to promptly select the appraiser for this process. If the two proposed appraisers cannot agree on an independent appraiser within a reasonable period, then either Party may apply to the American Arbitration Association to make such an appointment. Such appraiser shall act reasonably, promptly, and in good faith to determine the 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 the value 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 market price of the energy and environmental attributes generated by the System, the age, condition and performance of the System and advances in solar technology, and any other factors consistent with industry standards at such time for appraising solar photovoltaic generation facilities similar to the System; provided, that installed equipment shall be valued on an installed basis, and shall not be valued as scrap if it is functioning and in good condition. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The cost of the appraisal shall be borne by the Parties equally.

EXHIBIT H

Production Guaranty

A. Guaranty; Guaranty Limit. Subject to the Guaranty Limit specified below, Provider guarantees that during the Term the System will generate the Minimum Guaranteed Annual kWh (as defined below). If at the end of each successive twelve (12) month anniversary of your first monthly payment (each a “Contract Year”) the cumulative Actual Annual kWh (defined below) generated by the System is less than the Minimum Guaranteed Annual kWh, then we will credit your account in an amount equal to the Production Shortfall (as defined below) multiplied by the Production Shortfall Charge (defined below). We will make that account credit within thirty (30) days of the end of each respective calendar year. Notwithstanding any provision to the contrary set forth herein, in no event shall the credits provided under this Production Guaranty exceed \$[to be determined] in the aggregate over the Initial Term and Extension Period (the “**Guaranty Limit**”).

For example, if the first Contract Year commences on October 1, 2018 and ends on September 30, 2019, and the Actual Annual kWh generated by the System during such Contract Year is less than the Minimum Guaranteed Annual kWh, we will credit your account for the difference multiplied by the Production Shortfall Charge within thirty (30) days after December 31, 2019. See the table below as an example.

Example for illustration purposes only:

Example: Minimum Guaranteed Annual kWh	Example: Actual Annual kWh	Example Production Shortfall Charge per kWh	Example: Account Credit to You
_____	_____	\$ _____	\$ _____

If at the end of each successive Contract Year the Actual Annual kWh is greater than the Minimum Guaranteed Annual kWh applicable to such Contract Year, this surplus will be carried over and will be used to offset any deficits that may occur in future Contract Years. If your System produces more energy than the Minimum Guaranteed Annual kWh then this additional energy is yours at no additional cost.

B. Definitions.

“**Actual Annual kWh**” means the AC electricity produced by your System in kilowatt-hours measured and recorded by Provider during each successive twelve (12) month anniversary of your first monthly payment.

“**Minimum Guaranteed Annual kWh**” means, for each year, the amount set forth in the table below.

“**Measurement Period**” means the annual production measurement periods set forth in the table below.

“**Production Shortfall**” means, for any Measurement Period, the amount, if any, measured in kWh, by which the Actual Annual kWh is less than the Minimum Guaranteed Annual kWh for such Measurement Period.

“**Production Shortfall Charge**” means, for each year, in the amount set forth in the table below applicable to any Production Shortfall.

C. Minimum Guaranteed Annual kWh and Production Shortfall Charge Table

Contract Year	Minimum Guaranteed Annual kWh	Production Shortfall Charge
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

D. Conditions. This production guaranty is subject to the following conditions: (a) the Agreement being in full force and effect, (b) you being in compliance with all of your obligations under the Agreement, (c) there being no interference with or hindrance to the performance or operation of the System, (d) no buildings, structures or flora overshadow or otherwise block access of the sunlight to the System and (e) Provider having reasonable access to the Premises to perform maintenance and repair of the System as needed, and having reasonable access to the monitoring data for the System.

E. Exclusions.

This production guaranty does not apply to any lost power production due to the following:

- (i) someone other than Provider or its approved service providers installed, removed, re-installed or repaired the System;
- (ii) your failure to perform, or breach of, your obligations under the Agreement (for example, you modify or alter the System or fail to provide access or assistance to us in diagnosing or repairing a problem);

(iii) any Force Majeure Event;

(iv) any shading to the System in breach of the requirements of the Agreement or otherwise excess of that used in the calculation of the expected generation of the System, including shading from foliage that is new growth or is not kept trimmed to its appearance on the date the System was installed;

(v) any system failure or lost production not caused by a System defect;

(vi) a power or voltage surge, including a grid supply voltage outside of the standard range specified by the local utility or the System specifications or as a result of a local power outage or curtailment.

THIS PRODUCTION GUARANTY DOES NOT WARRANT ANY SPECIFIC ELECTRICAL PERFORMANCE OF THE SYSTEM, OTHER THAN THAT DESCRIBED ABOVE. THIS PRODUCTION GUARANTY IS THE SOLE AND EXPRESS WARRANTY MADE BY PROVIDER WITH RESPECT TO THE SYSTEM. PROVIDER HEREBY DISCLAIMS, AND ANY BENEFICIARY OF THIS LIMITED WARRANTY HEREBY WAIVES, ANY WARRANTY WITH RESPECT TO ANY COST SAVINGS FROM USING THE SYSTEM.

EXHIBIT I

Notice Of Rescission

You may rescind this Agreement, without any penalty or obligation, within three (3) business days from the Effective Date.

If you rescind, any payments made by you under the Agreement and any negotiable instrument executed by you will be returned within three (3) business days following receipt by Provider of your rescission notice, and any security interest arising out of the transaction will be canceled.

To rescind this Agreement, mail or deliver a signed and dated copy of this rescission notice, or any other written notice stating your rescission of this Agreement, to Provider as provided in Section 29 of Exhibit B hereto no later than the midnight of the third business day following the Effective Date.

I HEREBY RESCIND THIS AGREEMENT.

[Name of Customer]

By: _____
(Signature of Representative of Customer)
Name: _____
Its: _____
Date: _____

EXHIBIT K

Disclosure Regarding Variability of Utility Rates

Provider hereby provides Customer with the following disclosure:

Utility rates and utility rate structures are subject to change. These changes cannot be accurately predicted and projected savings from your solar energy facility are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative, or regulatory action.

Acknowledged and received by Customer on this ____ day of _____, 20__:

[Name of Customer]

By: _____
(Signature of Representative of Customer)
Name: _____
Its: _____
Date: _____

EXHIBIT L

Disclosure Regarding Assignment of the Agreement by Customer

Provider hereby provides Customer with the following disclosure:

If Customer wishes to transfer or assign its interest in the Agreement it must first obtain the prior written consent of Provider which shall not be unreasonably withheld. Customer shall give Provider at least thirty (30) days prior written notice of any requested assignment. Any permitted assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including any credit requirements, and shall deliver to Customer any required Performance Assurance and enforceability assurance as Provider may reasonably request as outlined in Section 32 of the Agreement

Acknowledged and received by Customer on this ____ day of _____, 20__:

[Name of Customer]

By: _____
(Signature of Representative of Customer)
Name: _____
Its: _____
Date: _____

EXHIBIT M

Disclosure Regarding Vacation or Transfer of Premises

Provider hereby provides Customer with the following disclosure:

If Customer wishes to sell or assign its interest in the Premises (including any leasehold interest) during the Term, it has two choices with respect to the assignment or termination of the Agreement as outlined in Section 20 and Section 32 of the Agreement as described below:

- With the consent of Provider (which shall not be unreasonably withheld), Customer may assign the Agreement to the new owner of the Premises or holder of the leasehold interest (in accordance with the provisions of Section 20 and Section 32), provided the new owner of the Premises or holder of the leasehold interest signs an agreement (in the form approved by Provider) assuming all of Customer's rights and obligations under this Agreement;

or

- Customer can terminate the Agreement upon payment to Provider of the applicable Termination Fee set forth in Exhibit F.

Acknowledged and received by Customer on this ____ day of _____, 20__:

[Name of Customer]

By: _____
(Signature of Representative of Customer)
Name: _____
Its: _____
Date: _____

EXHIBIT N
Form of
Guaranty

THIS GUARANTY AGREEMENT (this "Guaranty"), dated as of [date], is issued and delivered by [**enter corporate legal name**], a [state] [form of entity] (the "Guarantor"), for the account of [**enter corporate name**], a [state] [form of entity] (the "Obligor"), and for the benefit of [**enter corporate name**], a [state] [form of entity] (the "Beneficiary").

Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain _____ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [amount] **U. S. Dollars (U.S. [\$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising

from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral or any other remedy. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its

terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the later of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date").

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which

consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]
[Address]
Attention: [contact]
Email:[email address]

With a copy to:

[Seller name]
[Address]
Attention: [contact]
Email:[email address]

If to the Beneficiary, at:

[Beneficiary name]
[Address]
Attention: [contact]
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify to the other in writing in the manner provided herein. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

IN WITNESS WHEREOF, the Guarantor has executed this
Guaranty as of the day and year first above written

[Guarantor name]

By: _____
Name:
Title:

EXHIBIT O

Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:

Duke Energy Indiana, LLC
1000 E. Main Street
Plainfield, Indiana 46168

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable standby letter of credit No.: _____ for the account of _____ for an amount or amounts not to exceed _____ US Dollars in the aggregate (US\$ _____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours
[Issuing Bank]

Authorized Signer

Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]

[account number]

[name and address of bank at which account is maintained]

[aba number]

[reference]

The following amount:

[insert number of dollars in writing] United States Dollars

(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]*
dated *[effective date]*

[Beneficiary]

By: _____

Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

[check appropriate draw condition]

[_____] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of _____ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[_____] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

[Beneficiary]

By: _____
Title: _____

Schedule 6(e)

Form of Site Lease

[under development]