

Community Distributed Generation Credit Purchase Agreement (New York)

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name	Town of Caroline	Name	
Address	2670 Slaterville Rd, Slaterville Springs, NY 14881	Address	
Phone		Phone	
E-mail		E-mail	
Project Name	Sola Farm Non-Profits		

This Agreement sets forth the terms and conditions of the purchase and sale of Community Distributed Generation Credits (“Credits”) from the solar photovoltaic system described in **Exhibit 2** (the “**System**”) for the purposes of delivering Credits to the Purchaser’s account (the “**Account**”).

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

- Exhibit 1 Pricing Attachment
- Exhibit 2 System Description, Delivery Point and Premises
- Exhibit 3 General Terms and Conditions

Town of Caroline

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Pricing Attachment

1. **Term:** Twenty five (25) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each at option of Purchaser
3. **Contract Price:** \$ 0.074/kWh increasing on each anniversary of the Commercial Operation Date by 2.5%. The \$/kWh price includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.
4. **Credit Percentage Allocation and Estimated kWh Allocation:** 5.6% and 43,563 kWh in year one
5. **Customer Electric Utility Account for Credit Allocation:** to be defined
6. **Condition Satisfaction Date:** 120 days after the Effective Date
7. **Anticipated Commercial Operation Date:** 270 days after the Effective Date
8. **Outside Commercial Operation Date:** 360 days after the Effective Date

Exhibit 2
System Description

1. **System Location: to be defined**
2. **System Size (DC kW) and (AC kW): 608 kW DC, 486 kW AC**
3. **Expected First Year Energy Production (kWh): 775,000 kWh**
4. **Expected Structure: Single pile, 2 modules in portrait, DCE racking**
5. **Expected Module(s): Canadian Solar 320W**
6. **Expected Inverter(s): CPS 60 kW**
7. **System:** Prior to the start of construction, Seller shall attach a layout that accurately shows the location and basic design of the System which shall be attached as Attachment 1 to this Exhibit 2:

Exhibit 2, Attachment 1
System Layout

Exhibit 3
Solar Power Purchase Agreement General Terms and Conditions

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Credits.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, the applicable Percentage of Credits generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Credits generated by the System will be delivered to Purchaser at the Utility account identified on **Exhibit 1** (the “**Customer Account**”). Purchaser shall take title to Credits delivered to the Customer Account, and risk of loss will pass from Seller to Purchaser at the Customer Account.
3. **Term and Termination.**
 - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of producing and delivering Credits. This Agreement is effective as of the Effective Date.
 - b. **Additional Terms.** Either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the Credits generated by the System and delivered to the Customer Account at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System Meter.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of Credits produced by the System and delivered to the Customer Account, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).
 - d. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all Taxes assessed on the sale or consumption of Credits produced by the System, and, solely to the extent assessed following the Commercial Operation Date, taxes assessed on the generation and delivery of electricity produced by the System and on interconnection of the System to the Utility’s electric distribution grid; provided, however, Purchaser will not be required to pay or reimburse Seller for property taxes on the System or any Taxes during periods when Seller fails to deliver Credits to Purchaser due to the action or omission of Seller. For purposes of this Section 4(d), “**Taxes**” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes,

regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of Credits under this Agreement, which shall be Seller's responsibility.

5. **Environmental Attributes; Environmental Incentives; Net Metering Credits; Capacity Attributes.**

Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of Credits under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any written press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such press releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Nothing in the forgoing shall be construed as limiting the right of Purchaser's students, faculty, or staff from discussing the System.

As between Seller and Purchaser, Seller shall exclusively have the right to receive and designate recipients of any Capacity Attributes and shall be entitled to the benefit of all Capacity Attributes.

As between Seller and Purchaser, Purchaser shall exclusively have the right to receive and designate recipients of any Remote Net Metering Credits and shall be entitled to the benefit of all Remote Net Metering Credits. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Remote Net Metering Credits to Purchaser or its designee, including by executing and delivery such documentation to the Utility as may be required. If any Remote Net Metering Credits is received by Seller, Seller shall immediately transfer such Remote Net Metering Credits to Purchaser or its designee.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, or the proceeds thereof, whether general in nature or specific as to the location or any other attribute of the System, intended to value any aspect of the capacity of the System (other than the Storage Unit) to produce electric energy or ancillary services, including, but not limited to, any accounting construct under which the System would qualify for a resource adequacy requirement or any other measure by the New York Public Service Commission or NY-ISO.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"Environmental Incentives" means any and credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, NYSEDA, or the New York Public Service Commission), or any arbitrator with authority to bind a party at law.

“**Credit**” means any kilowatt-hour credit calculated as part of the process of measuring the Credits delivered to the Customer Account by the Utility pursuant to the State of New York Public Service Commission’s July 2015 Order Establishing a Community Distributed Generation Program and related regulation, tariffs, and agreements.

“**Tax Credits**” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations.**

a. **Conditions to Seller’s Obligations.**

Seller’s obligations under this Agreement are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between Seller and a subcontractor to install the System substantially as located and identified in Exhibit 2.
- ii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iii. Receipt of all necessary zoning, land use, building permits, and solar property tax exemption;
- iv. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility’s electric distribution system;

b. **Conditions to Purchaser’s Obligations.**

Purchaser’s obligations under this Agreement are conditioned on:

- i. the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See Exhibit 1).

c. **Failure of Conditions.**

If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, 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 the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

7. **Seller’s Rights and Obligations.**

- a. **System.** Seller shall develop, construct, install and properly maintain the System at its sole cost and expense. During the Term, Seller will operate and perform all repairs to, and maintenance of, the System at its sole cost and expense.
- b. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to temporarily suspend delivery of Credits from the System for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement.

8. **Purchaser’s Rights and Obligations.**

- a. **Community Distributed Generation.** Purchaser shall reasonably cooperate with Seller in connection with its obligations to participate in Community Distributed Generation and to obtain and receive related NYSEDA Incentives, including by timely providing and executing such documentation as Seller may reasonably request in connection therewith.

9. **Change in Law.**

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar

legislation), or (iii) a change in any Utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of Seller's obligations under this Agreement and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that neither (i) a change in federal, state, county or any other tax law after the Effective Date of this Agreement nor (ii) a change affecting the value of Environmental Attributes or Environmental Incentives after the Effective Date of this Agreement shall be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then, provided that the Change in Law occurred after the end of the sixth (6th) Contract Year, Purchaser may purchase the System for the Fair Market Value, and otherwise in accordance with the procedures established in Section 15.b. Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. Measurement.

Credits delivered to the Account shall be measured by the Utility meter located at the System.

11. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

- (1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");
- (2) failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- (3) if any representation or warranty 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;
- (4) Purchaser loses its rights to occupy and enjoy the Premises;
- (5) a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
- (6) Purchaser willfully, knowingly, or negligently prevents Seller from installing the System or fails to perform its obligations under this Agreement and such failure prevents the generation or delivery of electric energy from the System.

b. Remedies.

- (1) Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

- (2) Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event.
- (3) Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
 - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to half of the remaining contract term (in years) multiplied by the Estimated Credit Allocation (in kWh) multiplied by the Contract Price in which such termination occurred.
 - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term. The Termination Payment shall not be less than zero.
 - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, the Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

12. Representations and Warranties.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following:
 - (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors’ rights generally).
 - (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller the following:
 - (1) Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
 - (2) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - (3) No Pool Use. No Credits generated by the System will be used to heat a swimming pool.
 - (4) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility’s physical configuration, Purchaser’s planned use of the Facility, and Purchaser’s estimated electricity requirements, is accurate in all material respects; provided, however, that Seller acknowledges that it has not relied solely upon such information and has made its own independent determinations in connection with the design, construction and operation and maintenance of the System at the Facility.

13. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof, including, with respect to Purchaser, its Trustees, officers, employees, volunteers, students, agents or assigns (collectively, the “**Indemnified Parties**”, and separately, the “**Seller Indemnified Parties**” and “**Purchaser Indemnified Parties**”, as applicable), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 13.
- b. **Seller Indemnity.** Except as expressly provided under this subsection (b), Seller agrees to hold harmless the Purchaser Indemnified Parties from claims, damages, losses and expenses, including but not limited to attorneys’ fees, for damage to property owned by the Seller or any of its employees, agents or subcontractors, or any bodily or personal injury to its employees, agents or subcontractors arising out of, or from the performance of Seller’s operations or services, or any act, omission, claim or loss of any of Seller’s employees, agents, subcontractors or any other party Seller is responsible for (collectively, “**Losses**”), except to the extent such Loss is due to or caused by the gross negligence or willful misconduct of a Purchaser Indemnified Party. Further, nothing in the forgoing shall limit the right of Seller or its insurers to proceed against and collect insurance proceeds from Purchaser’s insurers to the extent such Loss is covered by Purchaser’s policies. Subject to the foregoing, Seller will indemnify, defend and hold harmless the Purchaser Indemnified Parties (with counsel reasonably acceptable to Purchaser), from and against all Liabilities resulting from or relating to any third-party claim for: injury to or death of persons, and damage to or loss of property, in each case, to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of Seller or its agents; provided, however, that nothing in this sentence requires Seller to indemnify Purchaser Indemnified Parties for any Liabilities resulting from or relating to any claim to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, any Purchaser Indemnified Parties. Subject to the foregoing, Purchaser agrees to defend, indemnify, and hold harmless Seller (with counsel reasonably acceptable to Seller), its employees, subcontractors and their employees from any Liabilities resulting from or relating to any third-party claim (other than employees, agents, contractors or subcontractors of Seller) in connection with damage to property or any bodily or personal injury, to the extent such Liabilities are due to the misconduct or negligence of the Purchaser, the Purchaser’s subcontractors or agents or any other person or party under the control (whether actual or constructive) of the Purchaser (but not including Seller, any of its employees, contractors, subcontractors, agents or any of its or their respective employees, contractors, subcontractors or agents).
- c. **Limitations on Liability.**
- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Except to the extent covered by Seller’s insurance policies, Seller’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(e)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action by either party must be brought within one (1) year after the cause of action accrues.

14. Force Majeure.

- a. “**Force Majeure**” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of Credits due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of Credits from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time

for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

15. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) ("**Financing Parties**") in connection with the installation, construction, ownership, operation and maintenance of the System. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

16. Confidentiality and Publicity.

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is

required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

17. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any press releases by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Press releases regarding the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights shall in addition be subject to the process set forth in Section 5.

18. **General Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Albany, New York. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, overnight courier, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt, the confirmed delivery by overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the persons identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed as an original document. Copies of notices may be sent by electronic mail; provided, that another means of notice must also have been employed in order for notice to have been provided in accordance with the terms of this Agreement. The Parties may update email addresses and other notice addressed from time to time during the Term.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Representations and Warranties, Insurance Coverage), Indemnification and Limits of Liability, Confidentiality and Publicity, Choice of Law, Arbitration and Attorneys' Fees, Notices, Comparative Negligence, Non-Dedication of Facilities, Service Contract, No Partnership, Full Agreement, Modification, Invalidity, Counterparts, Captions and No Third Party Beneficiaries. Any action by either party must be brought within one (1) year after the cause of action accrues.
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party in order to effectuate this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- g. Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement.
- i. Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of Credits from the System.
- k. No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Exhibit 3