

CRETE, NEBRASKA

**SOLAR POWER PURCHASE AGREEMENT
BETWEEN
CITY OF CRETE, NEBRASKA (BUYER)
AND
SE MUNICIPAL SOLAR, LLC (SELLER)**

DATED AS OF _____, 20__

Table of Contents

	Page
ARTICLE I DEFINITIONS	1
1.01 Defined Terms	1
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	8
2.01 Representations and Warranties of Buyer	8
2.02 Representations and Warranties of Seller.....	9
ARTICLE III CONTRACT TERM; COMMERCIAL OPERATION DATE; CONDITIONS.....	9
3.01 General.....	9
3.02 Conditions to Seller’s Obligations.....	10
3.03 Guaranteed Commercial Operation Date	11
3.04 Substantial Commercial Operation.....	11
ARTICLE IV PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES.....	11
4.01 Purchase and Sale	11
4.02 Test Energy.....	12
4.03 Billing	12
4.04 Payment and Interest	13
ARTICLE V DELIVERY OF ENERGY AND ENVIRONMENTAL ATTRIBUTES	14
5.01 Delivery of Energy	14
5.02 Transfer and Delivery of Environmental Attributes.....	14
5.03 Communications and Data Logging Systems.....	15
5.04 Delivery Metering.....	15
5.05 Testing	15
5.06 Corrections.....	16
5.07 Meter Maintenance	16
5.08 Interconnection Agreement	16
5.09 Start-Up Procedures.....	16
5.10 Interconnection	17
ARTICLE VI RIGHTS AND OBLIGATIONS	17
6.01 Rights and Obligations of Seller.....	17
6.02 Rights and Obligations of Buyer	18
6.03 Information and Data.....	19
6.04 Guaranteed Energy Production.....	19
ARTICLE VII SALE, TRANSFER OR ASSIGNMENT	20
7.01 Generally	20
7.02 Finance Assignments.....	20
7.03 Assignment to Municipal Energy Agency of Nebraska	21

Table of Contents (continued)

	Page
ARTICLE VIII FORCE MAJEURE	21
8.01 Force Majeure Defined	21
8.02 Effect of Force Majeure.....	22
8.03 Payment Obligations Not Excused.....	22
8.04 Deadlines Extended	22
ARTICLE IX RISK OF LOSS AND INDEMNIFICATION	22
9.01 Risk of Loss	22
9.02 Indemnification.....	23
9.03 Limitation of Liability	25
ARTICLE X EVENTS OF DEFAULT AND REMEDIES	26
10.01 Events of Default by Buyer	26
10.02 Events of Default By Seller	26
10.03 Remedies	27
10.04 Dispute Resolutions.....	27
10.05 Effect of Termination	28
ARTICLE XI INSURANCE	28
11.01 Coverage and Amounts	28
11.02 Additional Insureds.....	29
ARTICLE XII MISCELLANEOUS	29
12.01 Applicable Law.....	29
12.02 Notice and Service.....	29
12.03 Amendment	29
12.04 Expenses	29
12.05 Taxes and Other Charges.....	30
12.06 Maintenance of Records	30
12.07 No Partnership	30
12.08 No Duty To Third Parties	30
12.09 Dedication.....	30
12.10 Information	30
12.11 Counterparts.....	31
12.12 Severability	31
12.13 Intentionally Omitted.....	31
12.14 Successors and Assigns	31
12.15 Integration.....	31
12.16 Survival.....	31
12.17 Forward Contract.....	31
12.18 Physical Settlement Intended.....	31
12.19 Nondiscrimination Clause	32
12.20 Applicable Law.....	32

Table of Contents (continued)

	Page
Exhibit 1: Description of the Solar Energy Facility	
Exhibit 2: Target Energy Production	
Exhibit 3: Form of Attestation of Energy Production	
Exhibit 4: Addresses for Delivery of Notices and Billing	
Exhibit 5: Form of Consent and Acknowledgement	

SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement”) is made and entered into as the date on the cover page (“**Effective Date**”) and among the parties set forth in Exhibit 1 (each a “**Party**” and collectively, the “**Parties**”). The defined terms in Article I and Exhibit 1 shall apply throughout this Agreement. If there is a conflict between Article I and Exhibit 1, Exhibit 1 shall control.

WITNESSETH

WHEREAS, Seller proposes to construct, own, operate and maintain a solar electric generating facility for the purpose of producing electric energy for sale to Buyer as more particularly described in Exhibit 1 (the “**Solar Energy Facility**”); and

WHEREAS, Buyer desires to purchase electric energy produced by the Solar Energy Facility from Seller, and Seller desires to sell such electric energy to Buyer; and

WHEREAS, the Parties desire to set forth in writing their respective rights and obligations with respect to the purchase and sale of such electric energy;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

1.01 Defined Terms.

“Affiliate” shall mean, as to any Party, any Person (other than a natural person or a Tax Investor) that directly, or indirectly through one or more intermediaries, (i) controls, is controlled by, or is under common control with such Party, or (ii) is the beneficial owner of fifty percent (50%) or more of any class of equity securities of, or other ownership interests in, such Party or of which such Party is directly or indirectly the owner of fifty percent (50%) or more of any class of equity securities or other ownership interests.

“Agreement” shall mean this Solar Power Purchase Agreement, including all exhibits hereto, and any written amendments hereto that may be made from time to time in accordance herewith.

“Associated Party(ies)” shall mean, with respect to any Party, any Affiliate of such Party, any officer, director, trustee, fiduciary, employee, agent, representative, contractor or subcontractor of such Party.

“Buyer” shall have the meaning given in the Preamble.

“Buyer’s Cost to Cover” shall mean the difference between the Energy Price during the Measurement Period and the price Buyer paid the Municipal Energy Agency of Nebraska

("MEAN") for energy available from MEAN's portfolio for the Energy during the Measurement Period, less the actual cost of replacement Environmental Attributes provided by Seller under Section 6.04(c) for such Measurement Period.

"Capacity" shall mean the Solar Energy Facility's nameplate rating.

"Carryover" shall mean, for each Contract Year, one-half of one percent (0.5%) of the Target Energy Production for all previous Contract Years minus the summation of the actual amount of Energy in each such Contract Year subject to Curtailment below the Curtailment Threshold applicable to such Contract Year, but in no event less than zero.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Collateral Agent" shall have the meaning given in Section 7.02.

"Commercial Operations Date" shall mean the date designated as the Commercial Operations Date pursuant to Section 3.01.

"Commissioned" shall mean, with respect to any Module, that such Module has been installed and that Seller has taken all action necessary to enable the Module to commence the regular delivery of Energy.

"Committed Capacity" shall be as set forth in Exhibit 1.

"Confidential Information" shall mean proprietary or commercial information which if released would give advantage to business competitors. The existence of this Agreement shall not be considered Confidential Information.

"Contract Year" shall mean each consecutive twelve (12) month period beginning on the first January 1 after the Commercial Operations Date occurs.

"Contract Term" shall be as set forth in Exhibit 1.

"Costs" shall mean, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into a new arrangement or arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Curtailment" shall mean a reduction in delivery of Solar Energy Facility output due to an action or operational decisions made by and for the benefit of Buyer. Notwithstanding the foregoing, Curtailment shall not include reductions in delivery of Solar Energy Facility output due to: (1) Buyer maintaining or upgrading the Distribution System, or a third party maintaining or upgrading the transmission system or subtransmission system in accordance with Good Utility Practices; (2) Force Majeure or emergency condition on the Distribution System or the transmission system or subtransmission system owned by a third party; or (3) Buyer maintaining the reliability of the Distribution System or a third party maintain the reliability of the

transmission system or subtransmission system. For the avoidance of doubt, reduction in delivery of Solar Energy Facility output due to any such circumstances shall not be a breach of this Agreement by Buyer and shall not constitute Lost Production.

“Curtailed Threshold” shall mean, for each Contract Year, the lesser of (a) sum of (i) one half of one percent (0.5%) of the Target Energy Production for such Contract Year plus (ii) the Carryover and (b) one percent (1.0%) of the Target Energy Production for such Contract Year.

“Defaulting Party” shall have the meaning set forth in Section 10.03.

“Delivery Meter” shall have the meaning given in Section 5.04(a).

“Delivery Point” shall have the meaning given in Section 5.01(b).

“Designated Representative(s)” shall mean the representatives of Seller and Buyer designated pursuant to Sections 6.01(e) and 6.02(a), respectively.

“Dispute” shall have the meaning given in Section 10.04.

“Distribution System” shall mean the electric system facilities owned, leased or operated by Buyer and which are rated at or below a voltage level of 15,000 volts.

“Due Date” shall have the meaning given in Section 4.04(a)(i).

“Early Termination Date” shall have the meaning set forth in Section 10.03.

“Effective Date” shall mean the date set forth in the preamble.

“Energy” shall mean three-phase, sixty (60) hertz alternating current energy generated at the Solar Energy Facility.

“Energy Price” shall mean the price for Energy delivered to the Delivery Point, as escalated in accordance with Section 4.01(c).

“Environmental Attributes” shall mean the aggregate amount of credits (including renewable energy credits and renewable energy certificates), set-offs, payments, rights, attributes, or other benefits of all kinds associated with or arising out of or otherwise corresponding to the Rated Capacity and associated Energy, or otherwise arising due to the production of Energy, and the sale and distribution of such Energy by Seller, Buyer and others, other than payments under this Agreement and Tax Benefits. Environmental Attributes shall include (i) environmental air quality credits, off-sets or other benefits related to the generation of Energy in a manner which reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any Law, and (ii) credits, off-sets, green pricing programs, renewable energy credit trading programs, or any similar program or benefits derived from the use, purchase or distribution of renewable energy from the generation of Energy pursuant to any Law.

“Event of Default” shall have the meaning given in Sections 10.01 and 10.02.

“Excused Delay” shall mean a delay in achieving the Commercial Operations Date due to Force Majeure, delay by Interconnection Provider in entering into or performing its obligations under the Interconnection Agreement or any other agreement, breach by Buyer of this Agreement (including Seller’s exercise of any remedies for such breach), or any other action or inaction of Buyer or Interconnection Provider which prevents Seller from performing its obligations under this Agreement in a timely manner.

“Solar Energy Facility” shall mean Seller’s photovoltaic electric generation facility at the Facility Site, as described in Exhibit 1.

“Facility Debt” shall mean the obligations of Seller or a Seller Affiliate to any Lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest (including all interest accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Seller or a Seller Affiliate) on indebtedness, fees, expenses or penalties, amounts to fund reserves, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, including without limitation, reasonable attorney’s fees. Facility Debt shall continue to constitute Facility Debt, notwithstanding the fact that such Facility Debt or any claim for such Facility Debt is subordinated, avoided or disallowed under the federal Bankruptcy Code or other applicable Law. Facility Debt shall also include indebtedness of Seller or a Seller Affiliate secured by the Solar Energy Facility and/or the Facility Site incurred in connection with a conversion of a construction loan or bridge loan, or refinancing of the Facility Debt.

“Facility Site” shall mean the real property on which the Solar Energy Facility will be located.

“Financial Closing” shall mean the execution of loan agreements with the Lender or Lenders, or the execution of equity investment agreements with the Tax Investor or Tax Investors, providing for the construction financing of the Solar Energy Facility.

“Financing Documents” shall mean the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, pledge agreements, swap agreements, letters of credit and other documents evidencing, securing or otherwise relating to the development, bridge, construction and/or permanent debt financing or other extension(s) of credit for obtaining Facility Debt, including any credit enhancement, credit support, swaps, caps, floors, collars, hedging agreements, 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 Seller or a Seller Affiliate in connection with the development, construction, ownership, leasing, operation or maintenance of the Solar Energy Facility.

“Financing Party” shall mean any Person (including any Tax Investor) providing debt or equity financing (including lease financing, tax equity, equity contributions or equity commitments), refinancing of any such financing, or any guarantee, insurance, credit

enhancement, swap, cap, floor, collar, hedging agreement, working capital financing, or credit support for or in connection with such financing or refinancing, in connection with the development, construction, ownership or leasing, operation or maintenance of the Solar Energy Facility, or any part thereof, including any trustee or agent acting on any such Person's behalf.

"Fitch" shall mean Fitch Ratings, Inc., or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

"Force Majeure" shall have the meaning given in Section 8.01.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts generally acceptable in the region in light of the circumstances.

"Governmental Authority" shall mean any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of competent jurisdiction, but excluding Buyer and any such agency, commission, department or other such entity acting in its capacity as lender or guarantor.

"Guaranteed Commercial Operations Date" shall be as set forth in Exhibit 1.

"Guaranteed Energy Production" shall be as set forth in Exhibit 1.

"Indemnifiable Cost" shall mean any cost, expense, damage, fine, penalty, liability or other loss, including reasonable out-of-pocket legal, accounting, consulting, engineering, investigatory, expert witness and other fees and expenses.

"Indemnified Party" shall have the meaning given in Section 9.02(e)(i).

"Indemnifying Party" shall have the meaning given in Section 9.02(e)(i).

"Insolation" shall mean the watt-hour per square meter insolation on the Facility Site, as measured by Seller's pyranometer or similar measurement device installed at the angle of Module tilt and located within the boundaries of the Solar Energy Facility. Insolation data will be time synchronized to Buyer's metering and historical data, will be made available to Seller, and shall be used to calculate Lost Production.

"Interconnection Agreement" shall mean an agreement entered into between Seller and Interconnection Provider providing for the interconnection of the Solar Energy Facility to Buyer's Distribution System.

"Interconnection Provider" shall be as set forth in Exhibit 1.

“Interconnection Provider’s Interconnection Facilities” shall mean all equipment and facilities on Buyer’s side of the Delivery Point for the purpose of interconnecting the Solar Energy Facility to Buyer’s Distribution System.

“Interest Rate” means, on any date of determination, the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* (the average thereof, if there is a range of such rates) as of such date of determination; provided, that the Interest Rate shall never exceed the maximum rate permitted by Law. If *The Wall Street Journal* ceases to publish the “prime rate,” then Buyer and Seller shall agree as to a substitute reference that represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

“Investment Grade Credit Rating” shall mean that the applicable entity has a long-term credit rating (corporate or long-term senior unsecured debt) from at least two of S&P, Moody’s and Fitch, and is rated “BBB-” or better by S&P and Fitch and “Baa3” or better by Moody’s; provided, however, such entity shall be deemed not to have an “Investment Grade Credit Rating” if such entity’s long-term credit rating is lower than “BBB-” by either S&P or Fitch or lower than “Baa3” by Moody’s, or if a “credit watch,” “negative outlook” or other rating decline alert has been issued by S&P, Moody’s and/or Fitch.

“ITC” shall mean the investment tax credit established pursuant to Section 48 of the Internal Revenue Code of 1986, as it may be amended from time to time.

“Late Payment Rate” shall mean, for any period, the lesser of: (i) the Interest Rate plus one percent (1 %), or (ii) the maximum rate permitted by applicable Law.

“Law” shall mean: (i) any law, legislation, statute, act, rule, ordinance, decree, regulation, order, judgment, or other similar legal requirement, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

“Lender” shall mean any Financing Party providing debt financing, refinancing of any such financing, or any guarantee, insurance, credit enhancement, swap, cap, floor, collar, hedging agreement, working capital financing, or credit support for or in connection with such financing or refinancing of any such financing, in connection with the development, construction, ownership or leasing, operation or maintenance of the Solar Energy Facility.

“Lost Production” shall mean, for any hour, the amount by which the Maximum Facility Output is reduced due to a Curtailment above the Curtailment Threshold or a breach of the Agreement by Buyer (including Seller’s exercise of any remedies for such breach).

“Maximum Facility Output” shall mean, for any hour, the amount of Energy that the Solar Energy Facility would have been able to produce during the hour, based on the average Insolation for such hour; provided that the Maximum Facility Output for any hour shall be reduced, but not below zero, to the extent that the Solar Energy Facility would not otherwise have been available during such hour due to a maintenance outage, derating, or other circumstance solely within the control of Seller.

“Measurement Period” shall have the meaning given in Exhibit 2.

“Module” shall mean a discrete unit of photovoltaic cells and inverter(s).

“Moody’s” shall mean Moody’s Investor Service, Inc. or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

“MW” shall mean one megawatt of alternating current electric capacity.

“MWh” shall mean one megawatt-hour of energy.

“New Solar Incentive” shall have the meaning set forth in Section 4.01(d).

“Person” shall mean any legal or natural person, including any individual, corporation, partnership, limited liability company, joint stock company, association, joint venture, trust, governmental or international body or agency, or other entity.

“Place of Delivery” shall mean Buyer’s renewable energy account established by Buyer and maintained with the administrator of the applicable Environmental Attribute program(s), or such other location or account for the delivery to Buyer of the Environmental Attributes as Buyer may specify via written notice to Seller.

“Rated Capacity” means the sum of the Capacities of all Commissioned Modules.

“S&P” shall mean Standard & Poor’s or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

“Seller” shall have the meaning given in the Preamble.

“Settlement Amount” shall mean the Losses or Gains, and Costs, expressed in U.S. Dollars, which a Party incurs as a result of the termination of this Agreement pursuant to Section 10.03.

“Solar Incentive(s)” shall mean any and all credits, rebates, subsidies, payments or other incentives that relate to the use of technology incorporated into the Solar Energy Facility or other similar programs available from the manufacturer of any part of the Solar Energy Facility; provided, however, that Solar Incentives excludes Environmental Attributes.

“Substantial Commercial Operation” shall have the meaning specified in Section 3.04(a).

“Subtransmission System” shall be as set forth in Exhibit 1.

“Target Energy Production” for any Measurement Period shall mean the amount for such Measurement Period set forth in Exhibit 2.

“Tax” shall mean any tax (including franchise tax), charge, fee, levy or other assessment imposed by any Governmental Authority and based on or measured with respect to net income or profits, including any interest, penalties or additions attributable or imposed with respect thereto, and any tax, charge, levy, fee or other assessment, including any transfer, gross receipts, sales,

use, service, occupation, ad valorem, property, payroll, personal property, excise, severance, premium, stamp, documentary, license, registration, social security, employment, unemployment, disability, environmental (including taxes under Section 59A of the Code), add-on, value-added, withholding (whether payable directly or by withholding and whether or not requiring the filing of a tax return therefor), commercial rent and occupancy tax, and any estimated tax, deficiency assessment, interest, penalties and additions to tax or additional amounts in connection therewith, imposed by any Governmental Authority.

“Tax Benefits” shall mean federal, state or local investment tax credits (including ITCs), or any other tax credits or benefits which are or will be generated by the Solar Energy Facility, or any cash payments, outright grants of money or incentives from a Governmental Authority relating in any way to the development, ownership or operation of, or production from, the Solar Energy Facility other than Environmental Attributes.

“Tax Investor” shall mean any Person who acquires a direct or indirect interest in Seller as a part of a transaction to ensure that the Solar Energy Facility is owned in whole or in part by a Person able to use the Tax Benefits associated with holding an ownership interest in the Solar Energy Facility.

“Transmission System” shall be as set forth in Exhibit 1.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.01 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by Laws affecting the rights of creditors generally.

(c) There is no pending or, to the knowledge of Buyer’s, threatened action or proceeding affecting Buyer before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending against or being contemplated by Buyer or, to Buyer’s knowledge, threatened against it.

(d) There are no approvals, Authorizations, consents, or other action required by any Governmental Authority necessary to authorize Buyer’s execution and delivery of this Agreement.

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

(f) The output of the facility is fully subscribed and Buyer meet the rural requirements of the United States Department of Agriculture Rural Utilities Service.

2.02 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action.

(c) The Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as enforceability may be limited to Laws affecting the rights of creditors generally.

(d) There is no pending or, to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending against or being contemplated by Seller or, to Seller's knowledge, threatened against it.

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

(f) There are no approvals, Authorizations, consents, or other action required by any Governmental Authority necessary to authorize Seller's execution and delivery of the Agreement.

ARTICLE III
CONTRACT TERM; COMMERCIAL OPERATIONS DATE; CONDITIONS

3.01 General. The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the end of the Contract Term; provided, however that except as expressly provided herein, Seller's obligation to sell and deliver Energy and Buyer's obligation to accept and purchase Energy shall begin on the Commercial Operations Date which shall be no later than September 30, 2023. The termination of this Agreement shall be without prejudice to any rights or obligations of the Parties arising under this Agreement prior to such termination.

3.02 Conditions to Seller's Obligations.

(a) This Agreement shall be legally binding from and after the Effective Date.

(b) Notwithstanding the foregoing, Seller's obligations to construct the Solar Energy Facility and to sell the Energy produced thereby to Buyer are expressly subject to the fulfillment of each of the conditions listed below, in each case in form and substance satisfactory to Seller in Seller's reasonable discretion; provided that Seller may waive any such condition or may extend the date for fulfillment of any such condition:

(i) No later than ninety (90) days after the Effective Date, Seller shall have received all necessary Authorizations from the applicable Governmental Authorities for the development, construction, ownership, leasing, operation or maintenance of the Solar Energy Facility, and for the sale of the output thereof (excluding any Authorization which, by its nature, is not available or required prior to the commencement of construction, ownership, operation or maintenance of the Solar Energy Facility) and, with respect to each such Authorization, either: (A) all appeals or other challenges of such Authorization shall have been resolved to Seller's satisfaction, or (B) the time for filing appeals or other challenges to such Authorization shall have expired with no appeal or other challenge having been filed.

(ii) No later than ninety (90) days after the Effective Date, Seller and Interconnection Provider shall have entered into the Interconnection Agreement, and such Interconnection Agreement shall provide for the installation and energization of the Interconnection Provider's Interconnection Facilities at Buyer's cost within a time that will permit Seller to place the Solar Energy Facility in service in time to claim the ITC with respect to the Solar Energy Facility.

(iii) No later than ninety (90) days after the Effective Date, Buyer shall have provided to Seller a sufficient lease or similar property right to use the Facility Site, and any necessary leases, rights-of-way or utility or access easements related thereto to allow Seller to construct, operate and maintain the Solar Energy Facility for the Contract Term.

(iv) No later than ninety (90) days after the Effective Date, Seller shall have completed an evaluation of the Facility Site with respect to geotechnical conditions, environmental conditions, and obstructions indicating that the Solar Energy Facility can be constructed without substantial Facility Site remediation or substantially increased costs.

(v) No later than ninety (90) days after the Effective Date, Seller shall have determined that since the Effective Date, there has not been any change in any Law or in any operating standard applicable to Seller or the Solar Energy Facility which imposes material increased capital or operating costs on Seller, or materially decreases Seller's and Seller's owners' economic return from the ownership and operation of the Solar Energy Facility, including payments under this Agreement, Tax Benefits and Solar Incentives.

(vi) No later than one-hundred eighty (180) days after the Effective Date, the Financial Closing shall have occurred.

(c) If any condition set forth in Section 3.02(b) has not been satisfied or waived by Seller in writing on or before the date specified therein for reasons not due to act or omission of Seller, then Seller shall have the right to terminate this Agreement by written notice to Buyer no later than thirty (30) days after such date, without any further financial or other obligation to Buyer under this Agreement as a result of such termination. If Seller does not terminate this Agreement on or before the date that is thirty (30) days after the date for satisfaction of such condition, the applicable condition shall be deemed to have been waived.

3.03 Guaranteed Commercial Operations Date. If the Commercial Operations Date has not occurred by the Guaranteed Commercial Operations Date, Seller will pay Buyer Twenty Thousand Dollars (\$20,000) in delay damages (“Delay Damages”), and Buyer may also terminate this Agreement without further financial or other obligation on the part of either Party, other than for Seller to pay Buyer Delay Damages, by written notice to Seller no later than forty-five (45) days after the Guaranteed Commercial Operations Date. If Buyer does not deliver notice of termination by the end of such forty-five (45) day period, or if Commercial Operation is achieved prior to delivery of Buyer’s notice during such forty-five (45) day period, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.03.

3.04 Substantial Commercial Operation.

(a) Seller may declare the Solar Energy Facility to have achieved substantial commercial operation (“Substantial Commercial Operation”) provided that the Rated Capacity is at least ninety percent (90%) of the Committed Capacity.

(b) If Seller declares the Solar Energy Facility to have achieved Substantial Commercial Operation, the date of Substantial Commercial Operation and stated in the notice given under Section 5.09(c) shall be deemed to be the Commercial Operations Date for all purposes under this Agreement.

ARTICLE IV **PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES**

4.01 Purchase and Sale.

(a) Purchase and Sale. Following the Commercial Operations Date and continuing throughout the Contract Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and accept from Seller, all of the Energy and Environmental Attributes produced by the Solar Energy Facility and delivered to the Delivery Point and Place of Delivery at the Energy Price. For the Energy Price, Buyer shall have all rights to claim the capacity associated with the Solar Energy Facility, including without limitation the right to claim the capacity for purposes of resource adequacy. The Solar Energy Facility will be designed, constructed and operated so that the nameplate capacity does not exceed the Committed Capacity size. Seller acknowledges that Buyer is not obligated to compensate Seller for the delivery of excess Energy when the Solar Energy Facility generates power in amounts above the Committed Capacity. Seller waives any right to seek the PURPA avoided cost rate.

(b) Lost Production. In any month in which there is Lost Production, Buyer shall pay Seller an amount equal to the sum of: (i) the product of the Energy Price multiplied by the amount of Lost Production, and (ii) any Solar Incentives that Seller would have received with respect to the Lost Production. If Lost Production results from Buyer's need to avoid breach of or default under its obligations under a total-requirements wholesale contract or similar obligation, Buyer shall remain obligated to Seller under this provision, Seller shall have no liability to Buyer, and Buyer shall hold Seller harmless for any such breach or default.

(c) Energy Price. The price for Energy and Environmental Attributes produced by the Solar Energy Facility, and for Lost Production, shall be as set forth in Exhibit 1.

(d) New Solar Incentives. If there is any New Solar Incentive for which the Solar Energy Facility or the Seller is eligible, Seller shall use commercially reasonable efforts to qualify for such New Solar Incentive, and if it does so qualify, it will pay Buyer fifty percent (50%) of the proceeds actually received from such New Solar Incentive, net of (i) any cost of applying for and qualifying for such New Solar Incentive, (ii) any tax imposed on Seller's receipt of the proceeds of the New Solar Incentive, and (iii) any associated reduction in any other Solar Incentive or other tax or economic benefit to Seller from the ownership or operation of the Solar Energy Facility, or the sale of the output thereof. For purposes of this Section 4.01(d), a "New Solar Incentive" is a state or local financial benefit or tax incentive enacted after the Effective Date, which is not intended to replace or substitute for a Solar Incentive in existence on the Effective Date, which does not require any modification to the Solar Energy Facility to qualify for such benefit or incentive, and which does not lead to a reduction or recapture of any Solar Incentive or Tax Benefits that would otherwise be available to Seller or, if Seller is a pass-through entity for tax purposes, to its owners and equity investors.

(e) New Environmental Attributes. If any new Environmental Attribute becomes available for which the Solar Energy Facility or Seller or Buyer is eligible, Seller shall consult with Buyer. Upon Buyer's request after consultation, Seller shall use commercially reasonable efforts to qualify for such new Environmental Attribute, and if it does so qualify, Seller shall deliver the new Environmental Attribute to Buyer under Section 4.01 of this Agreement and Buyer shall reimburse Seller for its reasonable cost of applying for and qualifying for such new Environmental Attribute. Seller's failure to obtain any new Environmental Attribute despite using commercially-reasonable efforts to do so shall not constitute a breach or default under this Agreement.

4.02 Test Energy. At Buyer's option, Buyer shall purchase all Energy generated during all testing conducted prior to the Commercial Operations Date at eighty-five percent (85%) of the Energy Price.

4.03 Billing.

(a) Seller shall read meters promptly following the end of each month. The amount of Energy delivered to Buyer during the preceding month shall be determined from such readings, as such readings are adjusted pursuant to Section 5.06.

(b) Seller shall render bills for amounts due hereunder by e-mail, or other mutually agreed electronic means, as soon as practicable following the meter reading, and shall incorporate such information as may reasonably be necessary or desirable to determine the payments for Energy delivered during the preceding month, and other amounts due hereunder, including indemnification payments. Seller shall send bills to the address(s) in Exhibit 4.

(c) If this Agreement expires or is terminated, Seller shall, within five (5) Business Days after the termination or expiration, or as soon thereafter as practicable, provide a final billing statement to Buyer.

(d) If Seller owes any amount to Buyer pursuant to this Agreement, Buyer shall send Seller a statement of the amount then due in accordance with the above procedures.

4.04 Payment and Interest.

(a) Payment.

(i) All payments shown to be due on a bill shall be due and payable not later than thirty (30) days after receipt (the "Due Date").

(ii) If the paying Party, in good faith, disputes a portion of any bill, the paying Party shall render payment for the undisputed portion of such bill to the billing Party. Upon resolution of the Dispute, any amount found to be due and payable to the billing Party shall be paid to the billing Party in accordance with Section 4.04(b)(ii).

(iii) All payments on account of errors of any kind, including overpayments and errors in billing or in metering, shall include interest at the Prime Rate accruing daily from the date of such erroneous payment to the date of payment. If, in the case of a Delivery Meter error, the date of the error cannot be determined, then interest shall accrue on the adjusted amount from the date set in accordance with Section 5.06.

(iv) The paying Party shall render payment by wire transfer, ACH, or such other payment method as the Parties mutually agreed upon. Payments shall be sent to the address(s) set forth in Exhibit 4, or if payment is by wire transfer, in accordance with wiring instructions provided by the receiving Party's representative identified in Exhibit 4.

(b) Interest.

(i) If the paying Party fails to pay all or a portion of the undisputed amounts billed within the time stated in Paragraph (a) hereof, the paying Party shall owe interest on the unpaid portion of the bill, which interest shall accrue daily at the Late Payment Rate, from the Due Date until paid.

(ii) If any portion of a disputed amount is ultimately determined to be due to the billing Party, such amount shall be due and payable not later than ten (10) Business Days after resolution of the Dispute, and the paying Party shall owe interest on such portion of such disputed amount to the extent that such portion is determined to be

due and owing to the billing Party, which interest shall accrue daily at the Late Payment Rate, from the original Due Date of such amount until such amount is paid.

(c) No Set-off. All payments made by either Party shall be free and clear of, and without any deduction for or on account of, any set-off, counterclaim, or other liability to the billing Party, except to the extent required by Law.

ARTICLE V

DELIVERY OF ENERGY AND ENVIRONMENTAL ATTRIBUTES

5.01 Delivery of Energy.

(a) Characteristics. Energy to be furnished in accordance with Good Utility Practices.

(b) Delivery Point. All Energy sold by Seller to Buyer under this Agreement shall be delivered by Seller to the point of interconnection of the Solar Energy Facility on Seller's side of the transformer that connects the Solar Energy Facility with Buyer's Distribution System, as defined in the Interconnection Agreement (the "Delivery Point"). Energy shall be delivered by Seller to the Delivery Point free and clear of all liens, claims and encumbrances.

(c) Title and Risk of Loss. Title to Energy, and risk of loss with respect thereto, shall pass from Seller to Buyer at the Delivery Point.

5.02 Transfer and Delivery of Environmental Attributes.

(a) Environmental Attributes. Following the Commercial Operations Date and continuing throughout the Contract Term, and for any Test Energy purchased by Buyer prior to the Commercial Operations Date, as between Buyer and Seller, Buyer shall own or be entitled to claim all Environmental Attributes associated with the Energy produced by the Solar Energy Facility to the extent such Environmental Attributes may exist during the Contract Term, including all rights and authority for Buyer to register, hold, manage and retire such Environmental Attributes in Buyer's own name and to Buyer's account, including any rights associated with any renewable energy information or tracking system that may be established with regard to monitoring, tracking certifying, or trading such Environmental Attributes.

(b) Receipt of Environmental Attributes. Buyer shall be responsible for all arrangements and other actions required to make Buyer ready to receive the Environmental Attributes into its account at the Place of Delivery (or, in the case of any Environmental Attributes that, by their nature, do not have a place of delivery, to be capable of receiving within the applicable Environmental Attribute program(s) and associated monitoring, tracking, certification and/or trading system(s)).

(c) Clear Title. Seller represents and warrants that, at the time of sale to Buyer of all Environmental Attributes as provided herein, (i) such Environmental Attributes shall not have been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable energy program or standard, including any greenhouse gas reduction requirements; and (ii) Buyer shall possess all right, title to and interest in such

Environmental Attributes, free and clear of any liens or other encumbrances created by or through Seller.

(d) Risk of Loss. Risk of loss of any Environmental Attributes shall transfer from Seller to Buyer at the time the same are generated by the Solar Energy Facility.

(e) Attestation of Environmental Attributes. Seller shall present to Buyer a form set forth in Exhibit 3 with each invoice attesting to the amount of Energy produced by the Solar Energy Facility and delivered to Buyer and that Seller has not transferred to any other person the Environmental Attributes associated with such Energy.

5.03 Communications and Data Logging Systems. Seller shall provide Buyer and, provided Buyer is a member of the Municipal Energy Agency of Nebraska at the time, the Municipal Energy Agency of Nebraska, with access to the Solar Energy Facility, upon reasonable advance notice and during normal business hours, as may be necessary and appropriate to enable Buyer to install and maintain Buyer's remote terminal in a manner consistent with Good Utility Practice, provided that such access shall not unreasonably interfere with Seller's normal business operations. While at the Solar Energy Facility, Buyer shall observe such safety precautions as may be reasonably required by Seller and communicated to Buyer in writing.

5.04 Delivery Metering.

(a) Energy delivered by Seller to Buyer shall be measured by a meter located at the Delivery Point (the "Delivery Meter"), and shall have the metering instrument transformer, which measures the output of the Solar Energy Facility, on the side of the step-up transformer for the Solar Energy Facility set forth in Exhibit 1.

(b) Seller shall purchase and install the Delivery Meter, in accordance with Seller's standards and specifications for such metering, in effect on the effective date of the Interconnection Agreement, and shall operate and maintain the Delivery Meter at no cost to Buyer. The Delivery Meter shall be used for measuring the amount of Energy delivered to the Delivery Point under this Agreement.

(c) Buyer shall provide Seller full, real-time read access to Delivery Meter data. Seller shall use such data to bill Buyer for Energy.

5.05 Testing.

(a) The accuracy of the Delivery Meter shall be tested and verified, at Seller's expense, prior to the Commercial Operations Date by Buyer.

(b) Seller, at its expense, shall conduct a Delivery Meter test once every two (2) years following the Commercial Operations Date. If such test establishes that the Delivery Meter is not accurate, the Delivery Meter shall be appropriately adjusted or repaired at Seller's expense. Buyer reasonably may request additional Delivery Meter tests at any time. With respect to any such additional Delivery Meter test, if the Delivery Meter when tested is found to be inaccurate by at least two percent (2%), Seller shall pay for any such additional Delivery

Meter test. If the Delivery Meter is accurate to within two percent (2%), then Buyer shall pay for such additional Delivery Meter test. In either case, the Delivery Meter shall be appropriately adjusted or repaired at Seller's expense to correct the accuracy.

5.06 Corrections. If the Delivery Meter is found at any time to be inaccurate by more than two percent (2%), retroactive billing adjustments for such errors shall be made for (i) the actual period during which inaccurate measurements were made, if that period can be reasonably determined, or (ii) if the period during which inaccurate measurements were made cannot be reasonably determined, one-half of the period from the date of the last previous test of the Delivery Meter, but not to exceed six (6) months. If the difference of the payments actually made by Buyer minus the adjusted payment is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest at the Prime Rate from the date the original bill was due through the date of payment and such payment (including such interest) shall be made within thirty (30) days after receipt of a corrected billing statement.

5.07 Meter Maintenance. Each Party shall have the right to have a representative present whenever the other Party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Delivery Meter. Each Party shall give timely notice to the other Party in advance of taking any such actions. A Party's failure to have a representative present whenever the other Party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Delivery Meter shall not affect the validity of such action, provided that the notice required under the preceding sentence has been given.

5.08 Interconnection Agreement. The provisions of Sections 5.04 through 5.07 are subject to the applicable requirements of the Interconnection Agreement and any Governmental Authority with jurisdiction over the Delivery Meter. If any of the provisions of Sections 5.04 through 5.07 are inconsistent with such requirements, such requirements shall take precedence.

5.09 Start-Up Procedures.

(a) Expected Commercial Operations Date. Throughout construction, start-up, and testing, Seller shall keep Buyer informed of any changes to the expected Commercial Operations Date for the Solar Energy Facility.

(b) Start-Up. Not less than one (1) month prior to the projected Commissioning of the first Module at the Solar Energy Facility, Seller shall provide to Buyer a projected schedule for the start-up and testing of the Solar Energy Facility.

(c) Notice of Commercial Operations Date. As soon as practicable after completion of start-up and successful testing of the Solar Energy Facility (in compliance with the Interconnection Agreement and any applicable Law or Authorization, and any applicable requirement of any Governmental Authority), and provided that the Rated Capacity is at least ninety percent (90%) of the Committed Capacity, Seller shall provide Buyer a notice specifying when the Commercial Operations Date occurred.

5.10 Interconnection.

(a) Seller shall enter into an Interconnection Agreement with Interconnection Provider providing for the interconnection of the Solar Energy Facility with the Distribution System. Buyer shall be responsible for all costs associated with the interconnection of the Solar Energy Facility with the Distribution System, including all related capital costs and Subtransmission System upgrade costs, if any, as well as ongoing maintenance costs. Seller shall be responsible for all costs associated with system impact studies, facilities studies and upgrades required on any third-party transmission system in order to accommodate the interconnection of the Solar Energy Facility.

(b) Buyer shall be responsible for arranging for the transmission of Energy at and beyond the Delivery Point, scheduling of such transmission and any ancillary services required for such transmission, and all fees associated with such transmission and ancillary services, including congestion losses, scheduling services, balancing excluding generator imbalance, cash out of imbalances excluding generator imbalance, and any other charges resulting from the scheduling of an intermittent resource. Seller shall be responsible for any generator imbalance charges.

ARTICLE VI
RIGHTS AND OBLIGATIONS

6.01 Rights and Obligations of Seller.

(a) Design, Construction and Operation. Seller, at its sole cost, shall design, construct, operate and maintain the Solar Energy Facility and shall be responsible for all costs of decommissioning. Seller warrants that it will maintain and operate the Solar Energy Facility in accordance with this Agreement, Good Utility Practice, applicable Open Access Transmission Tariffs and associated transmission provider business practices and protocols, applicable reliability standards, regional criteria, and regulations, Federal Aviation Administration requirements, and the Law and shall not increase or decrease the Nameplate Capacity without the prior written consent of Buyer as evidenced by written agreement signed by authorized representatives of both Parties. At the end of the Solar Energy Facility's useful life, Seller shall be responsible for all costs associated with decommissioning or repowering the Solar Energy Facility.

(b) Solar Incentives. Seller shall be the owner of all Solar Incentives, and is entitled to the benefit of any ITCs and other tax deductions, credits and incentives related to the Solar Energy Facility, and Buyer's purchase of Energy does not include Solar Incentives or the right to Tax Benefits or any other attributes of ownership and operation of the Solar Energy Facility except Environmental Attributes. If any Solar Incentives are paid directly to Buyer, Buyer shall immediately pay such amounts to Seller.

(c) Notice of Change in Delivery. Seller shall use its commercially reasonable efforts to give advance notice to Buyer in the event of either an interruption in the delivery of Energy or a significant variation in the quantity of Energy delivered (other than

interruptions or variations due to changes in levels of Insolation), whether or not caused by Force Majeure.

(d) Access to Solar Energy Facility. Seller shall allow representatives of Buyer and, if Buyer is then a member of the Municipal Energy Agency of Nebraska, the Municipal Energy Agency of Nebraska to have access to the Solar Energy Facility, upon advance notice and during normal business hours, to observe construction, operation and maintenance of the Solar Energy Facility, and to make inspections and obtain information required in connection with this Agreement. While at the Solar Energy Facility, such representatives shall observe such safety precautions as may be required by Seller and communicated to Buyer and shall conduct themselves in a manner that will not interfere with the construction, ownership, operation or maintenance of the Solar Energy Facility.

(e) Designated Representative. Seller shall designate one or more representatives (each a “Designated Representative”) to maintain communications with Buyer’s Designated Representative(s), and to facilitate coordination between Buyer and Seller during the Contract Term.

(f) Information and Data. Seller shall supply any information or data required by Buyer to comply with the requirements of any applicable Law or Authorization, or the requirements of any Governmental Authority and any other information or data related to the operation or maintenance of the Solar Energy Facility reasonably requested by Buyer in order to verify amounts due hereunder and verify compliance with the terms and conditions of this Agreement; provided, however, that Seller shall not be required to incur any expense pursuant to this provision unless Buyer agrees to reimburse Seller for such expense.

(g) Progress Reports. Beginning on the last day of the first month following the Effective Date, and on the last day of each month thereafter until the Commercial Operations Date, Seller shall provide Buyer with a reasonably detailed written report on the progress of the development of the Solar Energy Facility during the preceding month. Seller shall be available to meet with Buyer at Seller’s offices or by telephone call as is reasonably requested by Buyer, to provide additional information or clarification of the written report on the progress of the development of the Solar Energy Facility.

(h) Environmental Attributes. Seller shall take all actions reasonably necessary to enable Buyer to receive all Environmental Attributes associated with the Solar Energy Facility; provided, however, that Seller shall not be required to incur any expense pursuant to this provision unless Buyer agrees to reimburse Seller for such expense.

6.02 Rights and Obligations of Buyer.

(a) Designated Representative. Buyer shall designate one or more representatives (each a “Designated Representative”) to maintain communications with Seller’s Designated Representative(s), and to facilitate coordination between Buyer and Seller during the Contract Term.

(b) Solar Incentives. Buyer shall take all actions reasonably necessary to enable Seller to receive the full benefits of any Solar Incentives during the Contract Term; provided, however, that Buyer shall not be required to incur any expense pursuant to this provision unless Seller agrees to reimburse Buyer for such expense.

(c) Environmental Attributes. If any Environmental Attributes are conveyed directly to Seller, Seller shall immediately transfer such Environmental Attributes to Buyer.

6.03 Information and Data. Buyer shall supply any information or data required by Seller to comply with the requirements of any applicable Law or Authorization, or the requirements of any Governmental Authority, provided, however, that Buyer shall not be required to incur any expense pursuant to this provision unless Seller agrees to reimburse Buyer for such expense. Buyer shall provide Seller with any other information or data reasonably requested by Seller in order to verify amounts due hereunder and verify compliance with the terms and conditions of this Agreement.

6.04 Guaranteed Energy Production.

(a) In each consecutive twelve (12) month period, beginning on the anniversary of the first day of the month following the month in which the Commercial Operations Date occurs (each, a "Measurement Period"), if the Guaranteed Energy Production for such Measurement Period exceeds the sum of the actual Energy production, the amount of such excess shall be the "Energy Shortfall" for such Measurement Period. If the final Measurement Period is less than twelve (12) full months, the Guaranteed Energy Production for such last Measurement Period shall be prorated based on the number of days in such last Measurement Period, with appropriate adjustments for monthly variations in the level of Insolation at the Facility Site.

(b) If there is an Energy Shortfall for any Measurement Period, then within thirty (30) days following the delivery of Buyer's invoice as set forth in Section 6.03(c), Seller shall (i) pay to Buyer an amount equal to the product of (A) the Energy Shortfall, in MWh multiplied by (B) Buyer's Cost to Cover and (ii) deliver to Buyer all replacement Environmental Attributes.

(c) No later than thirty (30) days after the end of each Measurement Period, Seller shall deliver to Buyer Seller's computation, in reasonable detail, of the sum of the actual Energy production for such Measurement Period. Within sixty (60) days after receipt of Seller's computation, Buyer shall deliver to Seller an invoice showing in reasonable detail Buyer's computation of any amount due Buyer for liquidated damages pursuant to Section 6.04(b) based on Seller's computation of the Energy Shortfall, which calculation shall include the amount of Environmental Attributes associated with the Energy Shortfall. Seller, at its sole cost, must deliver to Buyer within thirty (30) days replacement Environmental Attributes having the same attributes as the Environmental Attributes generated by the Solar Energy Facility. Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any objections Seller may have regarding any disputed portion of an invoice shall be raised by Seller within ninety (90) days after receiving the invoice. All

Disputes regarding such invoices shall be subject to Section 10.04. Objections not made by Seller within the twelve (12) month period shall be deemed waived.

(d) Each Party agrees and acknowledges that: (i) the damages that Buyer would incur in the event of an Energy Shortfall during any Measurement Period would be difficult or impossible to predict with certainty, and (ii) the liquidated damages contemplated by this Section are a fair and reasonable calculation of such damages.

ARTICLE VII

SALE, TRANSFER OR ASSIGNMENT

7.01 Generally.

(a) Except as provided in Section 7.02 or Section 7.03, neither Party may assign this Agreement without the express written consent of the other Party.

(b) Notwithstanding Section 7.01(a), (i) either Party may assign this Agreement to an Affiliate without the consent of the other Party, provided, however, that the assigning Party shall remain liable for all of its obligations under this Agreement unless and until the consent of the other Party is secured in accordance with Paragraph (a); (ii) Seller may assign this Agreement to any purchaser or transferee of all or a substantial portion of its assets without the consent of the other Party, provided that (A) the credit quality of the assignee is equal to or better than the credit quality of Seller as of the Effective Date; (B) the assignee has at least two (2) years' experience operating facilities similar to the Solar Energy Facility or has contracted with an operations and maintenance provider having such experience; and (C) the assignee expressly assumes and agrees to perform each and every obligation of Seller under this Agreement; and (iii) Buyer may assign this Agreement to any purchaser or transferee of all or substantially all of its assets without the consent of Seller, provided that (X) the assignee expressly assumes and agrees to perform each and every obligation of Buyer under this Agreement, and (Y) the assignee has at least an Investment Grade Credit Rating, or the obligations of the assignee are guaranteed by a guarantor that has at least an Investment Grade Credit Rating, pursuant to a guarantee agreement that is acceptable in form and substance to Seller.

7.02 Finance Assignments. Either Party may collaterally assign this Agreement to any Lender or any Lender's agent, without the consent of the other Party, in connection with the financing of the construction and operation of the Solar Energy Facility, including the assignment of a security interest in this Agreement to the United States Rural Utility Service ("RUS"), regardless of whether such financing is provided by such Lender directly or indirectly through one or more intermediaries (each such assignee being referred to herein as a "Collateral Agent"); provided, however, that no such assignment shall be effective for purposes of this Section until the assigning Party shall have notified the other Party of such assignment, which notice shall include the name and address of the Collateral Agent. After any assignment to the Administrator of RUS, the Administrator may, without the consent of the other Party, assign its interest in the Agreement to a third party. So long as any assignment of which the other Party has been notified, or any consolidation, modification or extension of any such assignment, shall remain outstanding, the following provisions shall apply:

(a) The assigning Party shall, upon serving upon the other Party any notice pursuant to this Agreement, also serve a copy of such notice upon each Collateral Agent at the address provided for in the notice referred to above. No notice issued by the assigning Party pursuant to this Agreement shall be deemed to have been duly given unless and until a copy thereof shall have been so served.

(b) A Party providing notice of any Event of Default by the other Party shall provide such notice to such Collateral Agent, and the notifying Party will accept a cure to an Event of Default of the other Party performed by such Collateral Agent, so long as the cure is accomplished within the time allowed in the Consent and Acknowledgement attached as Exhibit 5.

(c) The making of an assignment pursuant to this Section in and of itself shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Collateral Agent, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Collateral Agent, as such, to assume the performance of any of the terms or conditions on the part of the assigning Party to be performed hereunder.

(d) Upon request from the other Party, a Party will enter into a Consent and Acknowledgement with any Lender, in the form attached as Exhibit 5.

7.03 Assignment to Municipal Energy Agency of Nebraska. Buyer may assign this Agreement to the Municipal Energy Agency of Nebraska without consent of Seller provided that the Municipal Energy Agency of Nebraska expressly assumes and agrees to perform each and every obligation of Buyer under this Agreement.

ARTICLE VIII **FORCE MAJEURE**

8.01 Force Majeure Defined. The term “Force Majeure” as used herein, shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), pandemics, blockages, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to equipment of facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts or failure to act on the part of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions, arrests and restraints. Force Majeure does not include the inability of a Party to obtain financing, property, equipment or materials necessary to construct the Solar Energy Facility (except to the extent that the inability to obtain property, equipment or materials is itself due to Force Majeure as defined herein, suffered by Seller’s supplier), financial hardship or general economic or financial conditions. Force Majeure also does not include a covered event under Seller’s insurance unless Seller reasonably pursues all commercially-reasonable steps to recover pursuant to such insurance but is denied recovery thereunder.

8.02 Effect of Force Majeure. If either Party is rendered wholly or partly unable to perform its obligations under this Agreement or its performance is delayed because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform or delayed in performing due to the Force Majeure to the extent so affected, provided that:

(a) The Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such affect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence; provided that failure to provide notice in accordance with this Clause (a) shall not affect the ability of a Party to claim Force Majeure with respect to any period after such notice is actually provided.

(b) Such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party;

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

(d) The Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible.

8.03 Payment Obligations Not Excused. Notwithstanding anything in this Article to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

8.04 Deadlines Extended. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period except as otherwise specifically provided in this Agreement; provided, however, that in no event shall a Force Majeure extend the Contract Term.

ARTICLE IX
RISK OF LOSS AND INDEMNIFICATION

9.01 Risk of Loss.

(a) Seller. As between Buyer and Seller, Seller shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to any property located on Seller's side of the Delivery Point; and (ii) with respect to any personal injury or death, or loss of or damage to any other property arising out of the construction, ownership or leasing, operation or maintenance of any property of Seller or Seller's Associated Parties on Seller's side of the Delivery Point; provided, however, that Seller shall not be responsible for any loss, damage, or injury to the extent that such loss, damage, or injury arises out of the negligence or willful misconduct of Buyer or Buyer's Associated Parties.

(b) Buyer. As between Buyer and Seller, Buyer shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to any property located on Buyer's side of the Delivery Point, and (ii) with respect to any personal injury or death, or loss of or damage to any other property arising out of the construction, ownership, operation or maintenance of any property of Buyer or Buyer's Associated Parties on Buyer's side of the Delivery Point, provided, however, that Buyer shall not be responsible for any loss, damage, or injury to the extent that such loss, damage, or injury arises out of the negligence or willful misconduct of Seller or Seller's Associated Parties.

9.02 Indemnification.

(a) By Seller. Seller shall defend, indemnify and hold harmless Buyer and Buyer's Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Buyer, Seller, or others, or arising out of an action or omission of Seller or any of Seller's Associated Parties, (i) resulting from or attributable to the negligence or willful misconduct of Seller or any of Seller's Associated Parties, (ii) resulting from or attributable to the breach of any of Seller's representations or warranties contained herein, or (iii) resulting from, arising out of, or in any way connected with the performance of, or failure to perform, Seller's obligations under this Agreement or the construction, ownership or leasing, operation or maintenance of the Solar Energy Facility, including the delivery of Energy to the Delivery Point, excepting, in each case, any Indemnifiable Cost to the extent it is caused by the negligence or willful misconduct of Buyer or Buyer's Associated Parties.

(b) By Buyer. Buyer shall defend, indemnify and hold harmless Seller and Seller's Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Seller, Buyer, or others, or arising out of an action or omission of Buyer or any of Buyer's Associated Parties (i) resulting from or attributable to the negligence or willful misconduct of Buyer or any of Buyer's Associated Parties, (ii) resulting from or attributable to the breach of any of Buyer's representations or warranties contained herein, or (iii) resulting from, arising out of, or in any way connected with the performance of, or failure to perform, Buyer's obligations under this Agreement or the construction, ownership, operation or maintenance of any property of Buyer or Buyer's Associated Parties on Buyer's side of the Delivery Point, including the receipt of Energy at the Delivery Point, excepting in each case any Indemnifiable Cost to the extent it is caused by the negligence or willful misconduct of Seller or Seller's Associated Parties. Buyer shall protect, indemnify and hold harmless Seller from any claims of Buyer's creditors to any right, title or interest in the Solar Energy Facility.

(c) By Buyer and Seller. If, due to the joint, concurring, comparative or contributory negligence or willful misconduct of the Parties or their Associated Parties, either Party incurs any indemnifiable Cost arising out of any claim, such Indemnifiable Cost shall be allocated between Seller and Buyer in proportion to their respective degrees of negligence or willful misconduct contributing to such claim.

(d) Employees. Neither Party nor such Party's Associated Parties shall be deemed an employee of the other Party. Neither Party shall bring any claim against the other Party or any of such Party's Associated Parties with respect to any liability for compensation under any applicable state or federal Worker's Compensation Act, including Worker's Compensation and/or employer's liability claims of employees. Each Party shall be liable for all claims of the Party's own employees arising out of any provision of any Workers' Compensation Law.

(e) Notice and Participation.

(i) If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Article from the other Party (the "Indemnifying Party") with respect to any claim, the Indemnified Party shall give the Indemnifying Party notice of such claim. The Indemnifying Party shall have no liability under this Article for any claim for which such notice is not provided, but only to the extent that the failure to give such notice materially impairs the ability of the Indemnifying Party to respond to or to defend the claim.

(ii) The Indemnifying Party shall have the right to assume the defense of any claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel, at the Indemnifying Party's expense, to assert such legal defenses and to otherwise participate in the defense of such claim on behalf of such Indemnified Party, and the Indemnifying Party shall be responsible for the reasonable fees and expenses of such separate counsel.

(iii) Should any Indemnified Party be entitled to indemnification under this Section as a result of a claim by a third party, and should the Indemnifying Party fail to assume the defense of such claim within a reasonable period of time, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party), settle such claim.

(iv) Except to the extent expressly provided herein, no Indemnified Party shall settle any claim with respect to which it has sought or is entitled to seek indemnification pursuant to this Section unless (i) it has obtained the prior written consent of the Indemnifying Party, or (ii) the Indemnifying Party has failed to provide, within a reasonable period of time, security, in a form reasonably satisfactory to the Indemnified Party, securing the payment of any Indemnifiable Cost, up to the amount of the proposed settlement.

(v) Except to the extent expressly provided otherwise herein, no Indemnifying Party shall settle any claim with respect to which it may be liable to provide indemnification pursuant to this Section without the prior written consent of the Indemnified

Party, provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such claim, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's reasonable out-of-pocket legal fees and other costs related to the defense of the claim paid or incurred prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the claim, or portion thereof, that is the subject of such settlement agreement.

(f) Net Amount. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Indemnifiable Cost, net of any insurance or other recovery actually received by the Indemnified Party.

(g) Assertion of claims. No claim of any kind shall be asserted against either Party or such Party's Associated Parties, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, unless it is filed in a court of competent jurisdiction, or a demand for arbitration is made, within the applicable statute of limitations period for such claim.

(h) No Release of Insurers. The provisions of this Article shall not be deemed or construed to release any insurer from its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

(i) Survival of Obligation. The duty to indemnify under this Article shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any Indemnifiable Cost arising out of an event or condition which occurred or existed prior to such expiration or termination.

9.03 Limitation of Liability. For breach of any provision of this Agreement for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive exemplary or indirect damages, by statute, in tort or contract or otherwise (except to the extent that an Indemnifying Party is obligated under Section 9.02 to indemnify against third party claims for consequential, incidental, punitive, exemplary or indirect damages or lost profits or business interruption damages). The limitations herein imposed on remedies and the measure of damages is without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

10.01 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

(a) Buyer breaches or fails to observe or perform any of Buyer's material obligations under this Agreement, unless within thirty (30) days after written notice from Seller specifying the nature of such breach or failure, Buyer either cures such breach or failure or, if such cure cannot reasonably be effected by the payment of money and cannot be completed within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(b) Buyer fails to make any undisputed payment due under the Agreement within ten (10) days after such payment is due and fails to cure such failure within twenty (20) days after written notice from Seller.

(c) Buyer carries out any Buyer transactions prohibited by Article VII without the written approval of Seller.

(d) Buyer commences a proceeding or case in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Buyer, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Buyer or of all or any substantial part of its assets, or (iii) similar relief in respect of Buyer under any Bankruptcy Law.

(e) A proceeding or case is commenced, without the application or consent of Buyer, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of Buyer, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like, of Buyer or of all or any substantial part of its assets, or (iii) similar relief in respect of Buyer under any Bankruptcy Law, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days from commencement of such proceeding or case or the date of such order, judgment or decree.

(f) The Interconnection Provider shall default in the performance of any material obligation under the Interconnection Agreement and such default shall continue beyond any applicable cure period, unless, within thirty (30) days after the expiration of such cure period, Seller is able to enter into a replacement interconnection agreement sufficient to permit delivery of Energy to Buyer.

10.02 Events of Default by Seller. The following shall each constitute an Event of Default by the Seller:

(a) Seller breaches or fails to observe or perform any of Seller's material obligations under this Agreement, unless within thirty (30) days after written notice from Buyer specifying the nature of such breach or failure, Seller either cures such breach or failure or, if such cure cannot reasonably be effected by the payment of money and cannot be completed

within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(b) Seller is dissolved, or Seller's existence is terminated or its business is discontinued, unless this Agreement is assigned to a successor pursuant to Article VII, or unless a majority of the owners of Seller elect to continue the business of Seller under a successor company, and such company notifies Buyer of its intention to assume Seller's obligations under this Agreement within thirty (30) days after such dissolution, termination or discontinuation.

(c) Seller fails to make any undisputed payment due under the Agreement within ten (10) days after such payment is due and fails to cure such failure within twenty (20) days after written notice from Buyer.

(d) Seller carries out any of the Seller transactions prohibited by Article VII without the written approval of Buyer.

(e) Seller fails to comply with the provisions of and perform in accordance with the Interconnection Agreement such that Seller is in Breach or Default (each as defined therein) of the Interconnection Agreement and such Breach or Default is not cured within any applicable cure periods.

10.03 Remedies. If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have, in addition to all rights and remedies available at law and equity, the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts then owing between the Parties and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If Buyer is the Defaulting Party, Seller may collect the sum of amounts that would have been due to Seller had Seller delivered Energy at the Energy Price to Buyer in the amounts in Exhibit 2 through the end of the Contract Term. If Seller is the Defaulting Party, Buyer's remedy for Seller's failure to deliver Energy is Buyer's actual damages resulting from locating, procuring and purchasing a replacement Energy supply.

10.04 Dispute Resolution.

(a) General Provision. Every dispute of any kind or nature between the Parties arising out of or in connection with this Agreement (each a "Dispute") shall be resolved in accordance with this Section, to the extent permitted by Law.

(b) Referral to Senior Management.

(i) Upon the occurrence of a Dispute, either Party may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the thirty (30) day period following the date of the notice. Any such notice shall be delivered within a reasonable time after the Dispute arises, but in no event shall it be

delivered less than thirty (30) days before the institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.

(ii) Within seven (7) Business Days after receipt of a notice pursuant to Paragraph (i), the other Party shall provide a notice to the requesting Party indicating the names of the Senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the thirty (30) day period following the date of the notice.

(iii) During the remainder of the thirty (30) day period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to resolve the Dispute. Unless the Parties agree otherwise in writing prior to the commencement of such thirty (30) day period, neither Party shall be entitled to invoke or rely on any admissions, settlement offers or other statements made during the course of such discussions in any subsequent arbitration or legal proceedings.

(c) Litigation. Any Dispute that has not been resolved exclusively within thirty (30) days after the delivery of a notice in accordance with Section 10.04(b)(iii) shall be resolved by litigation in the trial court for the State in which the Solar Energy Facility is located having jurisdiction over the Solar Energy Facility location.

(d) Continued Performance. During the conduct of Dispute resolution procedures pursuant to this Section, except during any litigation, (i) the Parties shall continue to perform their respective obligations under this Agreement, and (ii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed to prevent Seller from suspending performance if Buyer has not paid undisputed amounts due and owing to Seller under this Agreement.

10.05 Effect of Termination. No early termination of this Agreement under Section 10.03 following an Event of Default shall relieve the Defaulting Party of its liability and obligations hereunder, and the Non-Defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement, and the rights given hereunder shall be in addition to all other remedies available to the Parties, either, at law, in equity, or otherwise, for the breach of this Agreement, provided, however, that any damages for the termination of this Agreement shall be as provided in Section 10.03.

ARTICLE XI **INSURANCE**

11.01 Coverage and Amounts. Seller, and all contractors and subcontractors performing any services in connection with the construction, operation or maintenance of the Solar Energy Facility, shall obtain and maintain in force comprehensive general liability insurance, public liability coverage and property insurance for injury to persons and property, automobile liability insurance and workman's compensation insurance, all in amounts and under terms which are generally carried by owners, operators or maintainers of projects similar to the Solar Energy

Facility. If any insured Party reasonably determines that any such policy of insurance is no longer available at commercially reasonable rates, such insured Party may use its commercially reasonable efforts to obtain substitute insurance which is as nearly identical as possible to the policy of insurance which it is intended to replace. Seller shall notify Buyer of any such substitution at least fifteen (15) days before it takes effect.

11.02 Additional Insureds. The insurance policies other than the workman's compensation policy shall name Buyer as an additional insured. Before commencing any deliveries under this Agreement, Seller shall deliver to Buyer, and require its contractors, subcontractors and agents to deliver to Buyer, in accordance with this Article 11, an insurance certificate evidencing the required coverage, limits and additional insured provisions as required by this Agreement. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer, insurance coverage shall be primary and non-contributory, and provide 15 days advance written notice to Buyer prior to anniversary date of cancellation or any material change in coverage or condition. A copy of the cancellation clause endorsement as noted above shall be attached to the insurance certificate.

ARTICLE XII MISCELLANEOUS

12.01 Applicable Law. This Agreement is executed in accordance with and is intended to be construed and governed under the Laws of the State of Nebraska, excluding any Law related to conflict or choice of Law which would result in the application of any Law to this Agreement other than the Laws of the State of Nebraska. Venue for any disputes regarding this Agreement shall lie in the trial court for the county or judicial district in which the Solar Energy Facility is located, as appropriate under applicable Law.

12.02 Notice and Service. Any notice, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by personal service, Federal Express or comparable overnight delivery service, addressed to the Party to be notified at the address(es) set forth in Exhibit 4. Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address(s) by either Party shall be made in writing no later than ten (10) Business Days prior to the effective date of such change.

12.03 Amendment. No amendment or modification of the terms of this Agreement shall be binding on either Buyer or Seller unless such amendment is reduced to writing and signed by both Parties.

12.04 Expenses. Except as specifically set forth in this Agreement, Buyer shall be responsible for Buyer's expenses related to the performance of its obligations under this Agreement, and Seller shall be responsible for Seller's expenses related to the performance of its obligations under this Agreement.

12.05 Taxes and Other Charges.

(a) Seller's Taxes. Seller shall be solely responsible for any Tax relating to the ownership or leasing, operation or maintenance of the Solar Energy Facility or its components or appurtenances, provided, Seller shall not be responsible for any sales, excise, gross receipts or other Tax, not measured by Seller's net income, imposed with respect to the sale or the purchase of Energy hereunder;

(b) Buyer's Taxes. Buyer shall be solely responsible for any Tax imposed with respect to the sale or the purchase of Energy. Seller shall be solely responsible for any Tax imposed with respect to the Solar Energy Facility or the Energy produced thereby which is not the responsibility of Seller under Section 12.05(a).

12.06 Maintenance of Records. Both Seller and Buyer shall keep a record of all invoices, receipts, charts, computer printouts, punchcards or magnetic tapes related to the volume or price of sales of Energy made under this Agreement. Such records shall be made available for inspection by either Party from time to time upon reasonable notice at the principal place of business of the non-requesting Party during regular business hours. All such materials, excluding Energy Price, volume and information required to be disclosed by Law, shall be deemed to be proprietary information, and shall be kept on record for a minimum of two (2) years from the date of their preparation.

12.07 No Partnership. Notwithstanding any provision of this Agreement, Seller and Buyer do not intend to create hereby any lease, joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.08 No Duty to Third Parties. Except as provided in Article VII, this Agreement is for the sole benefit of the Parties hereto, and nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a party to this Agreement. Except as specifically provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except Buyer and Seller. Except as provided in Article VII, the Parties specifically disclaim any intent to create any rights in any Person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.

12.09 Dedication. No undertaking by one Party to the other under this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

12.10 Information. Each Party shall make available to the other such other information relative to the Solar Energy Facility as may be reasonably required to carry out the terms of this Agreement.

12.11 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.12 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, or if any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, invalid, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof; provided, however, that Seller and Buyer shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, invalid, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, invalid, void, or contrary to Law.

12.13 Intentionally Omitted.

12.14 Successors and Assigns. Except to the extent otherwise indicated herein, all the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

12.15 Integration. There are no understandings between the Parties as to the subject matter of this Agreement other than as set forth herein, and this Agreement represents the entire understanding between the Parties in relation to the subject matter hereof. This Agreement supersedes any and all previous agreements, arrangements or discussions between the Parties (whether written or oral) in respect of the subject matter hereof, all of which are hereby abrogated and withdrawn.

12.16 Survival. The applicable provisions of this Agreement shall continue in effect after the expiration of the Contract Term, to the extent necessary to provide for final billing and adjustment, and to make other appropriate settlements hereunder.

12.17 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

12.18 Physical Settlement Intended. The Parties acknowledge and agree that the primary intent of this Agreement is for physical settlement of the commodity to be purchased and sold hereunder (i.e., to transfer ownership of the commodity and not to transfer solely its price risk), and that any option or optionality under this Agreement (a) is incidental to the primary purpose for entering into the Agreement and (b) cannot be severed and marketed separately from the Agreement. It is the intent of the Parties that this Agreement is not a "swap," as such term is defined in the Commodity Exchange Act and the Commodity Futures Trading Commission regulations and interpretations issued thereunder (the "CFTC rules"), or that this Agreement is generally exempt from requirements of the CFTC rules under CFTC Rule 32.3 (the "Trade Option Exemption") except those rules related to reporting and recordkeeping

requirements, as applicable. Accordingly, each Party represents and warrants to the other as follows:

- (a) With respect to the commodity to be purchased and sold hereunder, it is a commercial market participant and a commercial entity as such terms are used in the CFTC rules, and it is a producer, processor, or commercial user of, or a merchant handling the commodity, and it is entering into this Agreement for purposes related to its business as such.
- (b) It is not registered or required to be registered under the CFTC rules as a swap dealer or a major swap participant.
- (c) It has entered into this Agreement in connection with the conduct of its regular business and it has the capacity or ability to regularly make or take delivery of the commodity to be purchased and sold hereunder.
- (d) With respect to the commodity to be purchased and sold hereunder, it intends to make or take physical delivery of the commodity.
- (e) With respect to any embedded volumetric optionality in this Agreement, such optionality is primarily intended, at the time that the parties enter into this Agreement, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the commodity to be purchased and sold hereunder.
- (f) With respect to any embedded optionality or commodity option in this Agreement, such option is intended to be physically settled, so that, if exercised, the option would result in the sale of the commodity to be purchased or sold hereunder for immediate or deferred shipment or delivery.
- (g) The commodity to be purchased and sold hereunder is a nonfinancial commodity, and is also an exempt commodity or an agricultural commodity, as such terms are defined and interpreted in the CFTC rules.

12.19 Nondiscrimination Clause. In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §48-1122, Seller agrees that neither it nor any of its subcontractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment because of the race, color, religion, sex, disability or national origin of the employee or applicant.

12.20 Applicable Law. The Parties understand and agree that this Agreement and the operations hereunder are subject to all applicable laws, ordinances, orders, rules and regulations of any governmental entity, regional transmission organization, or Transmission Authority having or asserting jurisdiction (such as the Federal Energy Regulatory Commission (FERC), Southwest Power Pool, Midcontinent Independent System Operator, Western Area Power Administration), and the terms and conditions stated herein are subject to modifications resulting from changes in any such laws, ordinances, orders, rules or regulations. In addition, if the third party-owned transmission service provider providing network transmission integration service

for Buyer's load has not transferred functional control to a regional transmission organization or independent system operator, the Parties agree to work together in good faith to make necessary or desired changes to the terms and conditions of this Agreement to honor the intent of this Agreement in the event the such transmission service provider joins a regional transmission organization or independent system operator or otherwise transfers functional control to another entity. Notwithstanding the foregoing, no such changes shall affect or modify the Energy Price unless such change is set forth in an amendment to this Agreement and signed by authorized representatives of both Parties.

[The Remainder of This Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have caused the signatures of their authorized officers and their seals to be affixed as of the day and year first above written.

BUYER:

CITY OF CRETE, NEBRASKA

By: _____
David A. Bauer, Mayor

SELLER:

SE MUNICIPAL SOLAR, LLC
a Nebraska limited liability company

By: _____
Eric G. Johnson, President

EXHIBIT 1

Parties, Description of the Solar Energy Facility, Additional Definitions, and Supplemental Information

The Effective Date of this Agreement shall be this ____ day of _____, 20 ____

The Parties to this Agreement are: City of Crete, Nebraska (“Buyer”), and SE Municipal Solar, LLC (“Seller”). Buyer is a political subdivision and municipal corporation duly organized and validly existing and in good standing under the Laws of the State of Nebraska. Seller is a limited liability company duly organized and validly existing under the Laws of the State of Nebraska.

The solar energy conversion facility Seller proposes to construct, own, operate and maintain for the purpose of producing electric energy for sale (the “Solar Energy Facility”) is a 1600 MW AC solar electric generating facility in Crete, Nebraska.

“Committed Capacity” shall mean 1950 kW DC. Committed Capacity shall not increase and shall not change more than two percent (2%) down without Buyer’s written agreement.

“Contract Term” shall mean the period commencing on the Effective Date and ending at 12:59:59 p.m. on the date which is twenty-five (25) years from the last day of the year after the year in which the Commercial Operations Date occurs, or such earlier date when this Agreement may be terminated in accordance with the terms hereof.

“Guaranteed Commercial Operations Date” shall mean December 31, 2024; provided, however, that the Guaranteed Commercial Operations Date shall be extended on a day-for-day basis, or such longer time as may be necessary under the circumstances, for any delay in achieving the Commercial Operations Date due to an Excused Delay.

"Guaranteed Energy Production" for any Measurement Period shall mean ninety percent (90%) of the Target Energy Production (as defined in Exhibit 2) for such Measurement Period.

“Interconnection Provider” shall mean City of Crete, Nebraska or any successor pursuant to the terms of the Interconnection Agreement.

“Distribution System” shall mean the electric system facilities which are leased, owned or operated by Buyer and which are rated at a voltage level of 2.4kV volts and above, but less than 35kV volts. The Distribution System facilities serving the City of Crete, Nebraska, are rated at 13,800Y/7970 volts.

The price for Energy and Environmental Attributes the Solar Energy Facility produces that is delivered by Seller to the Delivery Point, and for Lost Production, shall be Thirty-Nine Dollars and Ninety Cents per megawatt hour (\$39.90/MWh) (the “Energy Price”). The Energy Price shall be escalated by one-half of one percent (0.5%) on the first January 1 after the Commercial Operations Date occurs, and on each anniversary thereof during the Contract Term. The Energy Price shall be payable by Buyer monthly in arrears.

Energy delivered by Seller to Buyer shall be measured by a meter located at the Delivery Point (the “Delivery Meter”), and shall have the metering instrument transformer, which measures the output of the Solar Energy Facility, located on the secondary side of the step-up transformer for the Solar Energy Facility.

EXHIBIT 2

Target Energy Production

(The chart below will be updated after the Commercial Operations Date based on the final Committed Capacity of the System as set forth in Exhibit 1, provided that any adjustment that is not a pro rata adjustment shall require the agreement of the Parties.)

<u>Measurement Period</u>	<u>Target Energy Production (MWh per year)</u>
Year 1 & 2	332
Year 3 & 4	328
Year 5 & 6	323
Year 7 & 8	319
Year 9 & 10	314
Year 11 & 12	310
Year 13 & 14	306
Year 15 & 16	301
Year 17 & 18	297
Year 19 & 20	293
Year 21 & 22	289
Year 23 & 24	285
Year 25 & 26	281

EXHIBIT 3

Form of Attestation of Energy Production

Pursuant to Section 5.02(e) of the Solar Power Purchase Agreement (the “Agreement”), dated _____, 20____ between the City of Crete, Nebraska (“Buyer”) and SE Municipal Solar, LLC (“Seller”), Seller hereby attests and certifies that the below listed solar Energy was produced by the Solar Energy Facility and delivered to the City of Crete, Nebraska distribution system on or about the date identified and that Seller has not transferred to any person other than _____ any of the Environmental Attributes associated with such Energy. Capitalized terms not herein defined have the meaning ascribed thereto in the Agreement.

Solar Energy Facility name and location: City of Crete Solar, Crete, Nebraska

Solar Energy Facility ID#: _____

Energy Source: Photovoltaic

Capacity (MW): 1.95

Commercial Operations Date: _____

Solar Generator Identification Number: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Seller further attests, warrants, and represents as follows:

- i) The information provided herein is true and correct; and
- ii) The SE Municipal Solar solar electric generating facility generated and delivered to the City of Crete Solar distribution system the solar Energy in the amount indicated as undifferentiated Energy.

SE MUNICIPAL SOLAR, LLC
a Nebraska limited liability company

By: _____
Eric G. Johnson, President

Date: _____

EXHIBIT 4

Addresses for Delivery Notices and Billing

Notices:

Any notices or demand under or required by this Agreement shall be in writing and shall be deemed properly given when (i) mailed by United States registered or certified mail, postage prepaid, return requested, addressed as follows:

If to Buyer: City of Crete
Attention: Jerry Wilcox, Clerk/Treasurer
243 East 13th Street PO Box 86
Crete, NE 68333
jerry.wilcox@crete.ne.gov

Copy to: City of Crete
Attention: Kyle Manley, City Attorney
243 East 13th Street P.O. Box 86
Crete, NE 68333
kyle.manley@crete.ne.gov

and _____

If to Seller: SE Municipal Solar, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

Billing and Payments:

Buyer: e-mail per 4.03(b): jerry.wilcox@crete.ne.gov

Wire transfer per 4.04(a)(iv):

Seller: _____

EXHIBIT 5

Form of Consent and Acknowledgement

CONSENT AND ACKNOWLEDGMENT

This Consent and Acknowledgment, dated as of _____, 20__ (this “Acknowledgment”), is made by the City of Crete, organized and existing under the Laws of the State of Nebraska (the “Buyer”), for the benefit of SE Municipal Solar, LLC (the “Seller”), and _____, as collateral agent (together with its successors and assigns, the “Collateral Agent”) for the financing institutions providing loans and other financial accommodations with respect to the Systems (as defined below).

The Buyer and Seller have entered into the Solar Power Purchase Agreement specified on the attached Annex 1 (the “PPA”) with respect to the photovoltaic solar power system (the “System”) located at the site described in such Annex 1.

The Seller has collaterally assigned or intends to collaterally assign, and has granted or intends to grant a security interest in, the PPA to the Collateral Agent to secure the obligations of the Seller and its affiliates under the financing and participation agreement (and related agreements and instruments) between the financial institutions for which the Collateral Agent acts as agent, pursuant to which agreement (and related agreements and instruments) such financial institutions are providing financial accommodations to the Seller and such affiliates in connection with, inter alia, the System (the “Financing Documents”).

Capitalized terms used but not otherwise defined in this Acknowledgment have the meanings given to them in the PPA.

1. Acknowledgment and Consent.

a) The Buyer acknowledges and consents to the collateral assignment by the Seller to the Collateral Agent of, and grant by the Seller to the Collateral Agent of a security interest in, all of Seller’s right, title and interest in, to and under the PPA for the System as stated in the Financing Documents.

b) The Buyer acknowledges that, during the continuance of an event of default under the Financing Documents (as notified to the Buyer by the Collateral Agent), the Collateral Agent will have the right to foreclose upon or otherwise acquire and succeed to all of the Seller’s right, title and interest in, to and under the PPA, including the right to continue to perform in place of the Seller, the right to require the Buyer to continue to perform under the PPA for the benefit of the Collateral Agent or its successors or assignees (as the new “Seller” under such PPA), to the extent those rights

are contained in the Financing Documents and the right to rely upon all representations, warranties, indemnities and agreements made by the Buyer under the PPA.

c) Until further written notice from the Collateral Agent to the Buyer, the Buyer agrees to pay any and all amounts payable to the Seller under the PPA, including without limitation payments for energy purchased under the PPA, payments of any indemnities, or termination payments that may at any time become payable under or in respect of the PPA, to the Collateral Agent, by remitting such payments to the account specified on the attached Schedule 1.

d) The Buyer accepts that the Collateral Agent is a “Financing Party” as defined in and for the purposes of the PPA.

2. Rights of Collateral Agent. Notwithstanding anything to the contrary in the PPA:

a) The Collateral Agent, as collateral assignee, shall be entitled to exercise, in the place and stead of the Seller, any and all rights and remedies of the Seller under the PPA in accordance with the terms thereof.

b) The Collateral Agent shall have the right, but not the obligation, to pay all sums due under the PPA and to perform any other act, duty or obligation required of the Seller thereunder or cause to be cured any default of the Seller thereunder provided the Collateral Agent does not take possession of the System. The Buyer acknowledges and agrees that the Collateral Agent has not assumed and does not have any obligation or liability under the PPA, and that the exercise by the Collateral Agent of its rights or remedies under the Financing Documents shall not constitute an assumption of Seller’s obligations under the PPA, except to the extent any such obligations are expressly assumed by the Collateral Agent or its designee pursuant to an instrument in writing unless the Collateral Agent takes possession of the System.

c) If the Buyer becomes entitled to terminate the PPA due to an uncured default thereunder by the Seller, the Buyer agrees not to terminate the PPA without first giving written notice of such uncured default to the Collateral Agent and giving the Collateral Agent the same cure period afforded to the Seller under the PPA, plus an additional period of thirty (30) days, to permit the Collateral Agent to cause such default to be cured. The Buyer understands that in order to cure certain defaults by Seller under the PPA the Collateral Agent may need to have possession of the System or related assets, and accordingly the Buyer agrees that if the Collateral Agent diligently seeks such possession, whether by foreclosure proceedings or a court action (such as, for example, seeking the appointment of a receiver of the Seller’s property), the Collateral Agent’s additional 30-day cure period shall be extended for 30 days more to obtain such possession.

d) The Buyer agrees that it will promptly notify the Collateral Agent of any breach or default by Seller under the PPA at the notice address for the Collateral Agent

listed on the attached Schedule 2 (or at such other address for notices as the Collateral Agent may specify in writing to the Buyer).

3. Confirmation. The Buyer confirms the following matters for the benefit of Seller and the Collateral Agent with respect to the System: [Note: If any statement below is not true at time of signing, Buyer will so state in the execution version and indicate the reason a statement is not true at such time.]

a) To the Buyer's knowledge, no Event of Default by the Seller exists under the PPA, and, to the Buyer's knowledge, no breach or default by the Seller has occurred thereunder that would, with the giving of notice or lapse of time, constitute an Event of Default by the Seller.

b) No Event of Default by the Buyer exists under the PPA, and no breach or default by the Buyer has occurred thereunder that would, with the giving of notice or lapse of time, constitute an Event of Default by the Buyer.

c) The PPA is in full force and effect and has not been amended since the date of that agreement, except as specifically stated in the attached Annex 1; and there are no other agreements or representations of any kind between the Buyer and Seller as to the subject matter of the PPA.

d) The Buyer agrees that the Solar Energy Facility has achieved Commercial Operation and that the Commercial Operations Date has occurred.

e) All conditions precedent for the required performance of its obligations under the PPA have either been met or have been waived, and that Buyer has not received any written termination notice from the Seller due to any conditions to Seller's obligations set forth in Section 3.02(b) of the PPA not having been satisfied nor waived.

No termination, amendment, variation, waiver or other supplement of any provision of this Acknowledgement shall be effective unless in writing and signed by the Buyer, the Seller and the Collateral Agent.

The Buyer hereby represents and warrants that it has the full power, authority and legal right to execute, deliver and perform this Acknowledgment.

This Acknowledgment has been duly executed and delivered by each of the Buyer and the Seller, and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Acknowledgment as of the date first above written.

BUYER:

SELLER:

CITY OF CRETE, NEBRASKA

SE MUNICIPAL SOLAR, LLC
a Nebraska limited liability company

By: _____
David A. Bauer, Mayor

By: _____
Eric G. Johnson, President

ANNEX 1
to Consent and Acknowledgment

Systems

Power Purchase Agreement:

SCHEDULE 1
Account Information

(To be provided by Seller prior to COD)

Bank:

Account Name:

Account #:

ABA #:

SCHEDULE 2
Addresses for Notices

If to Collateral Agent:

If to Seller:

SE Municipal Solar, LLC
Attention: Michael Knapp
1209 Harney St. #400
Omaha, NE 68102
michael@sandhillsenergyco.com

If to the Buyer:

City of Crete
Attention: Jerry Wilcox, Clerk/Treasurer
243 East 13th Street PO Box 86
Crete, NE 68333
jerry.wilcox@crete.ne.gov

Copy to:

City of Crete
Attention: Kyle Manley, City Attorney
243 East 13th Street P.O. Box 86
Crete, NE 68333
kyle.manley@crete.ne.gov

and
