



Solar Power Purchase Agreement (Commercial NY)

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

Purchaser:		Seller:	
Name and Address	Ulster County 244 Fair Street, P.O. Box 1800 Kingston, NY 12402 Attention: Marc Rider	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(845) 340-3805	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	mrid@co.ulster.ny.us	E-mail	Contracts@solarcity.com
Facility Ownership	Purchaser will acquire a real property interest in the Facility		Contractor’s License Numbers NY: No State License Required
Project Name	Ulster County Landfill		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on certain property that will be leased by the Purchaser (the “**Premises**”); the specific land underlying the System on the Premises is described in **Exhibit 2** (the “**Facility**”).

Seller, or a Qualified Party, as defined by applicable law, at Seller’s direction, shall conduct the State Environmental Quality Review (the “**SEQR**”) Act process. Prior to the effectiveness of the Agreement, as set forth below, nothing in this Agreement shall be construed as committing the Purchaser to approve the undertaking or approval of the System until such time as all of the requirements of SEQR have been satisfied. Rather, until such time as the Purchaser and/or the Lead Agency appointed under SEQR following coordinated review complies with the requirements of SEQR, this Agreement is limited to authorizing contemporaneous environmental, engineering, economic, feasibility and other studies and preliminary planning necessary to formulate the proposal for action and to demonstrate site selection as required in connection with the New York State Energy Research and Development Authority. No final action may be taken before the Purchaser has complied with the requirements of SEQR.

This Agreement will become effective automatically upon the completion by Seller, or a Qualified Party, as defined by applicable law, of the SEQR process.

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

- Exhibit 1 Pricing Attachment
- Exhibit 2 System Description, Delivery Point and Premises
- Exhibit 3 [Reserved]
- Exhibit 4 General Terms and Conditions (*Revised January 17, 2013*)
- Exhibit 5 Specifically Authorized Disclosures
- Exhibit 6 NY-Sun Incentive Program Addendum to Agreement
- Exhibit 7 Form of Amendment

Ulster County

SolarCity Corporation

Signature: Marc Rider

Signature: [Handwritten Signature]

Printed Name: Marc Rider

Printed Name: LYNDON RIVE

Title: Director of Purchasing

Title: CEO

Date: 5/14/2015

Date: May 14, 2015

LEGAL APPROVED
INITIALS TK/TAL
DATE 5/14/15
SolarCity

Exhibit 1
Pricing Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to three (3) Additional Terms of five (5) years each.
3. **Environmental Incentives and Tax Credits Accrue to Seller. Environmental Attributes Accrue to Purchaser.**
4. **Contract Price:**

Contract Year	\$/kWh
1	\$0.0780
2	\$0.0792
3	\$0.0804
4	\$0.0816
5	\$0.0828
6	\$0.0840
7	\$0.0853
8	\$0.0866
9	\$0.0879
10	\$0.0892
11	\$0.0905
12	\$0.0919
13	\$0.0933
14	\$0.0947
15	\$0.0961
16	\$0.0975
17	\$0.0990
18	\$0.1005
19	\$0.1020
20	\$0.1035

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

5. **Condition Satisfaction Date:** 180 days after the Effective Date
6. **Anticipated Commercial Operation Date:** 270 days after the Effective Date
7. **Outside Commercial Operation Date:** 365 days after the Effective Date
8. **Rebate Variance:** All prices in this Agreement are calculated based on a Block 1 monetary incentive from the NYSERDA 2015 Block Incentive Program. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.

Exhibit 2

System Description, Delivery Point and Premises

1. **System Location:** Frank Sottile Blvd & Miron Ln , Kingston, New York 12401
2. **System Size (DC kW):** 2,600.28
3. **Expected First Year Energy Production (kWh):** 3,341,360
4. **Expected Structure:** Ground Mount
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Hanwha:310QPRO	8,388

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Solectria:SGI500XTM	4

7. **Includes:**

Installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system). Pricing includes design and construction of an access road (if necessary), general site preparation allowance of \$40,000, utility interconnection study and interconnection cost allowance of \$150,000.

Under the laws of the State of New York, the prevailing rate of wages applies to Seller's performance of its obligations hereunder, and the System constitutes a "public work project" under Article 8, Section 220 of New York State's Labor Law, and the prevailing rate of wages are included as part of the services under this Exhibit 2, §7. The Contract Price (i.e. the price per Kilowatt Hour) contained in Exhibit 1, §4, entitled "Contract Price," reflects the payment of the prevailing rate of wages pursuant to New York's State Labor Law. Seller shall fully comply with Article 8, Section 220 of New York State's Labor Law.

8. **Excludes:**

Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure beyond allowance stated above in item 7, payment bonds, performance bonds, tree removal, tree trimming, sales tax and property tax. Pricing excludes maintenance of access road to array area or maintenance of grass or undergrowth within the array area (Purchaser is expected to maintain grass or undergrowth of area - SolarCity will plant low growth seed mix).

9. **Delivery Point and Premises:** SolarCity shall attach a schematic that contains the:

- (i) Facility;
- (ii) array;

(iii) Delivery Point; and

(iv) access points needed to install and service System (bldg access, electrical room, stairs etc.)

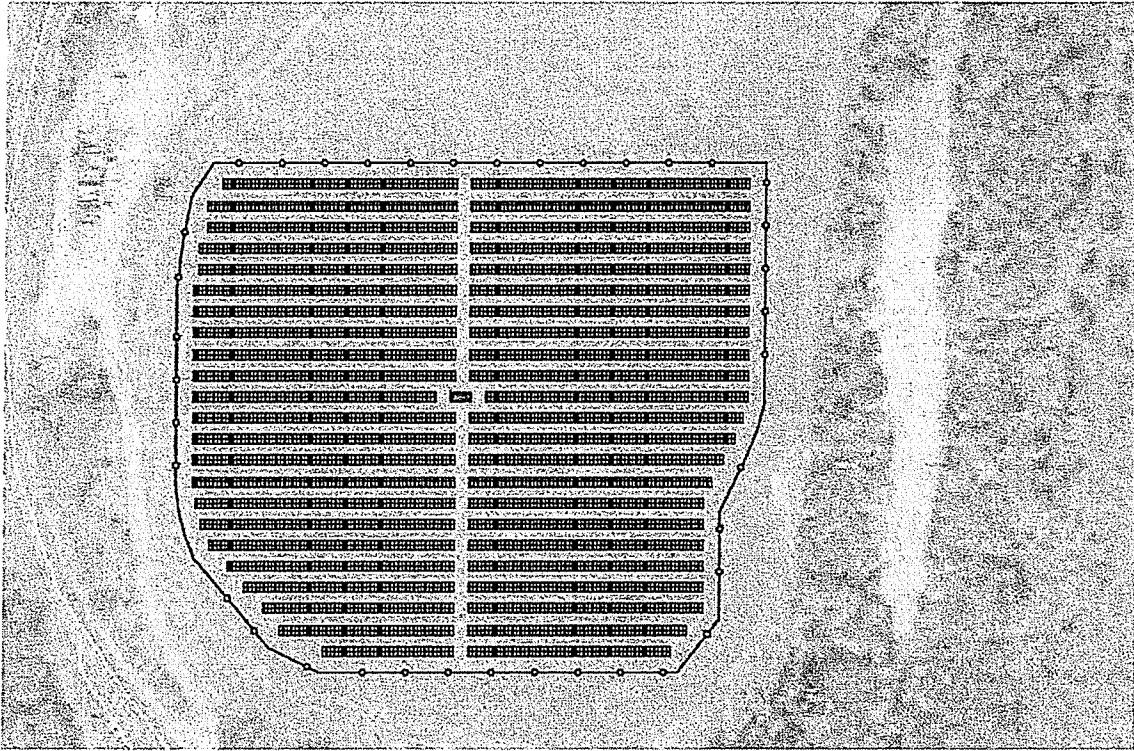


Exhibit 3

[Reserved]

Exhibit 4

Solar Power Purchase Agreement General Terms and Conditions

Revised January 17, 2013

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

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "Term"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on Exhibit 2 (the "Delivery Point"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy from other sources to the extent the Purchaser's electric requirements exceed the credit received from the output of the System to offset the Purchaser's power usage at its facilities.

3. **Term and Termination.**
 - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

 - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

 - c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be

required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 4(d), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.

For purposes of this Section 4(c), it is understood that the Parties are studying the potential property taxes on the System that may be assessed by Governmental Authorities. The Parties agree that Seller shall use commercially reasonable efforts to assist Purchaser in pursuing any and all tax exemptions that are available pursuant to law, including, but not limited to, §487 of New York State's Real Property Tax Law.

- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. For any undisputed portion of the invoice amount not paid within the thirty (30) day period, late payments and interest due shall be computed in accordance with the Prompt Payment Provisions of Section 179 of the New York State Finance Law.

5. **Environmental Attributes and Environmental Incentives.**

Seller is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System (other than the Environmental Attributes), all of which shall be retained by Seller. Environmental Attributes shall be retained by, transferred to and/or assigned to Purchaser; provided that Purchaser's rights to Environmental Attributes shall be subordinate to any claims of an subject to any requirements imposed by NYSERDA in connection with the PON award. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller; provided that if Purchaser desires to incur any out-of-pocket costs or expenses it shall notify Seller of any such out-of-pocket costs or expenses Purchaser anticipates incurring in connection with such actions as soon as reasonably possible to allow Seller to cover such costs or expenses. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. If any Environmental Attributes are paid directly to Seller, Seller shall immediately pay such amounts over to Purchaser.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

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

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

“**Environmental Laws**” means all federal, state and local laws, regulations, by-laws and ordinances, including policies and guidelines, orders, consent orders, settlement agreements and judgments of any Governmental Authority relating to pollution, protection of the environment or human health or safety, now or hereafter in effect.

“**Environmental Permits**” means all federal, state and local authorizations, certificates, permits, franchises, licenses, approvals required by, and any filings made to, any Governmental Authority pursuant to Environmental Laws regarding the Premises, Facility and the System, including, without limitation, a post-closure use permit for the Landfill.

“**Pre-Existing Environmental Conditions**” means the Ulster County Resource Recovery Agency’s Landfill (the “**Landfill**”) and any and all Hazardous Substances which are on the Premises as of the Effective Date.

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

6. Conditions to Obligations.

a. Conditions to Seller’s Obligations.

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

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the “**Premises**”) and examination of all Environmental Written Materials (as defined in Section 8.k.) related to and including, if applicable, geotechnical work, environmental condition and status under all applicable Environmental Laws and Environmental Permits, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits and Environmental Permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility’s electric distribution system;
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement;
- vii. Prior to Seller commencing construction and installation of the System, Purchaser shall have acquired title to or a leasehold or other property interest in the Premises; and
- viii. Prior to Seller commencing construction and installation of the System, Purchaser and Seller shall have entered into an amendment to this Agreement, the form of which is attached as **Exhibit 7**.

b. Conditions to Purchaser’s Obligations.

Purchaser’s obligations under this Agreement are conditioned on the completion of the following conditions:

- i. Occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit 1**); and
- ii. Receipt of a Block 1 incentive from the NYSERDA 2015 Block Incentive Program; provided that Seller may proceed to Block 2 or subsequent Blocks of the NYSERDA 2015 Block Incentive Program with the express written approval of Purchaser, said approval not to be unreasonably withheld.

c. Failure of Conditions.

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

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

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use and building permits and Environmental Permits required to construct, install and operate the System; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system at the utility service rate most financially beneficial to the Purchaser; provided that, notwithstanding the foregoing, Purchaser acknowledges that Seller does not control treatment of the System and, in particular, does not commit to securing any particular service rate.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility and the Premises to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to this Exhibit. All contractors and subcontractors, other than those that may be scheduled on an appendix to this Exhibit, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law

to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.

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

- a. **Facility Access Rights.** The Parties agree that this Agreement is subject to Purchaser acquiring title to or a leasehold or other property interest in the Premises, also known as the "Ulster County Landfill," owned by the Ulster County Resource Recovery Agency, a public benefit corporation of the State of New York, and located on Frank Sottile Boulevard, Town of Ulster, County of Ulster, and State of New York (SBL #: 48.12-1-21.2). Upon Purchaser acquiring title to or a leasehold or other property interest to the Premises, Purchaser will grant to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties.
- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will not permit cessation of electric service to the Facility from the local utility. If applicable, Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility or Premises which may adversely affect the operation and maintenance of the System without Seller's prior written consent, which consent shall not be unreasonably withheld. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) day light hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives in accordance with Section 4. For avoidance of doubt, the forty-eight (48) hour period

shall include all Scheduled Outage hours allowed under any of the terms of this Agreement, including those undertaken pursuant to Section 8(d).

- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.
- i. **[Reserved].**
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. **Environmental Written Materials.** Purchaser shall promptly furnish to Seller, on an on-going basis throughout the Term and without necessity of request, all information, data, studies, analyses, tests, monitoring, notices, reports or other communications of any kind concerning the Premise's compliance with Environmental Laws and Environmental Permits as Purchaser may possess, receive, file or submit or to which it otherwise has access or control from time to time, including, without limitation, any release or suspected or threatened release of Hazardous Substances at, on, about, under or from the Premises, compliance with applicable Environmental Laws and Purchaser's liability under applicable Environmental Laws including, but not limited to Landfill and/or waste site closure design, remediation requirements, operation and maintenance requirements, testing and monitoring or any proceeding initiated or threatened by any person alleging liability under Environmental Laws, or seeking or imposing investigatory, remedial or corrective obligations under Environmental Laws ("**Environmental Written Materials**").

9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change

in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts previously and actually accrued prior to termination and such termination shall not constitute a Default Event by Purchaser hereunder.

10. Relocation of System.

If (i) Purchaser ceases to conduct business operations at and/or vacates the Facility or (ii) Seller is prevented from operating the System at the Facility (through no fault of Seller) or (iii) the System is otherwise prevented from delivering electricity (through no fault of Seller), in each case prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during the period of time the System is not in operation due to the relocation and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives in accordance with Section 4. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement; Testing.

- a. Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system (the "Metering Device") installed, repaired and maintained by Seller as part of the System. The Metering Device shall meet the general commercial standards of the solar photovoltaic industry and shall meet ANSI-C12.20 standards for accuracy throughout the term of this Agreement. Seller shall maintain the Metering Device in accordance with industry standards.
- b. If either Party disputes the accuracy of the Metering Device, then either Party may request a test of the Metering Device. A Party may request a test no more than once every two (2) years.
 - (1) If the Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy of the Metering Device shall bear the cost of inspection and testing of the Metering Device.

- (2) If the Metering Device is found to be inaccurate by more than two percent (2%), then (A) Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (B) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy. If the Parties are unable to reasonably determine the period of inaccuracy, the period shall be deemed to be six months. If as a result of such adjustment the quantity of Energy for any period is decreased (such quantity, the "Energy Deficiency Quantity"), Seller shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Energy for any period is increased (such quantity, the "Energy Surplus Quantity"), Purchaser shall pay for the Energy Surplus Quantity at the Contract Price. Any correction in billing or payments resulting from a correction shall be made via credit or debit in the next invoice or payment rendered.

13. **Default, Remedies and Damages.**

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

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

- b. **Remedies.**

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

of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

(3) Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):

- A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) reasonable compensation, on a net after tax basis assuming a tax rate of 35%, for the loss or recapture of (A) the investment tax credit equal to thirty percent (30%) of the System value; and (B) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (C) loss of any Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (D) other financing and associated costs not included in (A), (B) and (C), (ii) the net present value of the projected payments (using a discount rate of 9%) over the Term post-termination, had the Term remained effective for the full Initial Term, (iii) removal costs as provided in Section 13(b)(3)(C) and (iv) any and all other amounts previously and actually accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations and Warranties.

a. General Representations and Warranties. Each Party represents and warrants to the other the following:

- (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry

on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. Seller's Representations and Warranties. Seller represents and warrants to Purchaser the following:

- (1) The Landfill. Seller has read the Environmental Written Materials and is aware of the presence of the Landfill on the Premises, to the extent disclosed in the Environmental Written Materials.
- (2) Activities on the Premises. Seller acknowledges that Environmental Laws may prohibit and/or require the use of certain construction, operation, maintenance and removal procedures in connection with the use of the Premises for the System.
- (3) Compliance with Environmental Laws. All Seller's activities on the Premises, including but limited to the construction, operation, maintenance, decommissioning and removal of the System, shall be conducted in material compliance with Environmental Law.

c. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

- (1) License. Purchaser will use best efforts to acquire title to or a leasehold or other property interest in the Premises, also known as the "Ulster County Landfill," owned by the Ulster County Resource Recovery Agency, a public benefit corporation of the State of New York, and located on Frank Sottile Boulevard, Town of Ulster, County of Ulster, and State of New York (SBL #: 48.12-1-21.2). Upon Purchaser acquiring title to or a leasehold or other property interest in the Premises, Purchaser will have the full right, power and authority to grant the License described in Section 8(a). Such grant of the License will not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and will not be inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises and/or Facility, Purchaser will have obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- (2) Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- (3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- (5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
- (6) Environmental Permits. Purchaser has obtained, possesses, is in compliance with and has made all necessary filings for issuance or renewal of, all material Environmental Permits applicable to the Premises, and all such Environmental Permits are appended to Exhibit 6.
- (7) Environmental Compliance. Purchaser is, and during the past five (5) years has been, in material compliance with Environmental Laws applicable to the Premises.
- (8) No Environmental Proceedings. Except with respect to matters that have been settled or resolved with no ongoing liabilities or obligations, Purchaser has not received any written notice of any proceeding regarding any actual or alleged violation of, or liability under Environmental Laws, or any investigatory, remedial or corrective obligations under Environmental Laws, in each case with respect to the Premises, nor is any such proceeding threatened to Purchaser's knowledge.
- (9) No Environmental Releases. To Purchaser's knowledge, the Purchaser has not caused the release of Hazardous Substances at, on, about, under or from any of the Premises which would reasonably be expected to give rise to material liability under Environmental Laws.

- (10) No Environmental Events. To Purchaser's knowledge, there are no events: (i) that would prevent continued compliance by the Purchaser with Environmental Laws and the requirements of Environmental Permits applicable to it or the operation of the Premises in the same manner as presently operated and as contemplated by this Agreement, or (ii) based upon the acts or omissions of the Purchaser, that would result in the liability of Purchaser under any applicable Environmental Laws.
- (11) Environmental Written Materials. Purchaser has delivered to Seller true, correct and complete copies of all Environmental Written Materials (as defined in Section 8.k.) pertaining to the Premises in its possession, receipt, access or control.

d. Seller's Warranties.

- (1) Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Term.
- (2) During the Term, Seller will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to Seller under this Agreement. If Seller damages the Facility or property Seller will repair the damage Seller causes or pay Purchaser for the damage Seller causes. Seller may use new or reconditioned parts when making repairs or replacements. Seller may also, at no additional cost to Purchaser, upgrade or add to any part of the System.
- (3) Seller's total liability arising out of or relating to this Section 14(d) shall in no event:
 - A. *For System Failure or Replacement:* exceed the total of the Purchaser's payments under this Agreement during the previous twelve (12) month period; and
 - B. *For damages to the Facility or property:* exceed three million dollars (\$3,000,000).

- e. NO OTHER WARRANTY. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 14(A), 14(B) and 14(D), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY UNDER THIS AGREEMENT. THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

15. System Damage and Insurance.

- a. System Damage. If the System is damaged or destroyed other than by (i) Purchaser's gross negligence, willful misconduct or breach of this Agreement or (ii) causes relating to Pre-Existing Environmental Conditions, including but not limited to the Landfill and the settling or subsidence thereof and the presence of Hazardous Materials, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last two (2) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement without liability, unless Purchaser agrees to pay for the cost of such restoration of the System.
- b. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:
 - i. Seller's Insurance. Seller shall maintain (i) property insurance on the System for the replacement cost thereof, (ii) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate naming Purchaser as additional insured, (iii) employer's liability insurance with coverage of at least \$1,000,000, (iv) workers' compensation and disability insurance as required by law and (v) Automobile Bodily Injury Liability and Property Damage Liability Insurance, with a minimum Combined Single Limit (CSL) of \$1,000,000.
 - ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

- c. **Policy Provisions.** All insurance policies provided hereunder, except where municipalities are self-insured, shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
- d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Incentives and Tax Credits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the Fair Market Value be less than the aggregate of the amounts calculated under Sections 13(b)(3)(A)(ii) and (iv) as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense,

liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may 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. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to (i) Pre-Existing Environmental Conditions; (ii) the Landfill on the Premises, including but not limited to settling or subsidence thereof; and (iii) the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. **"Hazardous Substance"** means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence) or strict liability.

18. **Force Majeure.**

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It may include such events as failure or interruption of the

production, delivery or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred (100) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts previously and actually accrued but unpaid).

19. **Assignment and Financing.**

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

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. Except as indicated in Exhibit 5, the terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to or by a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. **Goodwill and Publicity.**

- a. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement except as indicated in Exhibit 5. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party except as indicated in Exhibit 5. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.
- b. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use under this Agreement, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy related to the System and shall not submit for publication any such releases without the written approval of Seller except as indicated in Exhibit 5. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

22. **General Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration, Jurisdiction, Venue and Attorneys' Fees.** Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the Executive or the Purchasing Director, after consultation with the Ulster County Attorney, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany, New York. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 14(e) (No Other Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration, Jurisdiction, Venue and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar regulated entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon

such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Bonds.** Notwithstanding any language to the contrary in this Agreement and solely to the extent a performance and/or payment bond is being issued to Purchaser:
 - i. **Performance bond liability.** Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
 - ii. **Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.
 - iii. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.

End of Exhibit 4

Exhibit 5

Specifically Authorized Disclosures

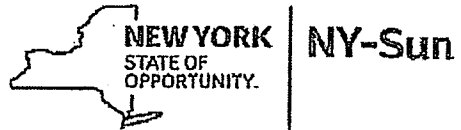
Notwithstanding any other rights, obligations, or responsibilities to disclose under applicable law, including but not limited to FOIL, the Parties agree that Purchaser may accurately disclose the following facts:

- That Ulster County signed Power Purchase Agreement with SolarCity, date executed;
- PPA term (20 years);
- System size (Capacity of solar pv system in kw), number of panels and inverters, it is a ground mount system, acreage used, location of system;
- Electricity production - Estimated and actual kwh as measured by SolarGuard and CHG&E meter;
- SolarCity chosen through a competitive bidding process by the Municipal Electric and Gas Alliance;
- SolarCity will design, install, maintain, and remove system;
- Remote net-metering arrangement will be used;
- County will purchase all electricity generated by system from SolarCity on a per-kwh basis (without specifying cost);
- SolarCity guarantees the amount of electricity that will be produced (without specifying actual guarantee amount);
- County will receive credit from CHG&E on a per-kwh basis;
- County will receive all renewable energy credits and other environmental attributes associated with electricity production of the system, and reduce greenhouse gas emissions;
- County has option to purchase system as prescribed in the PPA.

Exhibit 6

NY-Sun Incentive Program Addendum to Agreement

[attached]



NY-Sun INCENTIVE PROGRAM ADDENDUM to AGREEMENT

Please check appropriate box below.

This Agreement is related to a PV project receiving incentive funding under the NY Sun Residential/Small Commercial (<200 kW) Incentive Program

This Agreement is related to a PV project receiving incentive funding under the NY Sun Initiative Commercial/Industrial (>200 kW) Incentive Program

All Participating Installers and/or Contractors must incorporate this Addendum into the agreement between the Contractor and/or Installer and the Customer (Agreement) for each PV project receiving incentives.

The following terms will apply to all NY-Sun supported PV projects (Residential/Small Commercial (<200 kW) AND/OR Commercial/Industrial (>200 kW)):

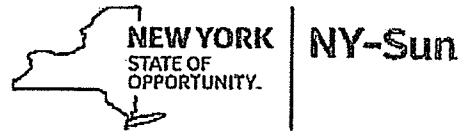
Attorney Consultation: The Agreement to which this Addendum is made part is a legally binding document; you may wish to consult with an attorney before signing.

Conflicting Terms: In the event of a conflict between the terms in any other contractual instrument between the Installer and/or Contractor and Customer and the terms of this Addendum, the terms of this Addendum shall control.

Assumption of Responsibilities: Should the Contractor or owner of the PV System sell or transfer ownership of the PV System during the term of the Agreement, the Contractor/owner agrees that it will alert Customer in advance of such transfer or sale, and that, during the duration of the term of the Agreement, either: (1) the Contractor will remain responsible to the Customer for all obligations and responsibilities stated herein, or (2) under the agreement of sale the buyer will assume all responsibilities to Customer stated herein, if applicable.

Incentives: The Contractor is required to disclose the full amount of the NYSERDA incentive to the end-use customer.

Renewable Portfolio Standard Attributes: Orders issued by the NYS Public Service Commission provide that the RPS Program and coordinated Statewide programs including NY-Sun will support and promote an increase, to 30%, of the percentage of the energy consumed in NYS that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSERDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program, including but not limited to the NY-Sun Initiative, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program or the NY-Sun Initiative, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS. No party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NY-Sun Initiative, or any successor, to any party or system outside of New York State.



NY-Sun INCENTIVE PROGRAM ADDENDUM to AGREEMENT

Inspection/Reporting/Commissioning: For quality control purposes, all parties including the Customer must provide NYSERDA or its representative with reasonable access to the PV System in order to conduct site inspections or remote monitoring services. Final incentive payment may be contingent on NYSERDA inspection of the installed PV System..

Publicity and Site Events: Customers and Installers and/or Contractors are required to collaborate with NYSERDA's Director of Communications should they prepare any press release or plan any news conference related to the PV System. NYSERDA is authorized to use PV System photographs in brochures, on its website, and in other print materials.

Tax Incentives: Customers are encouraged to consult the Internal Revenue Service (See www.irs.gov), the NYS Department of Taxation and Finance (See www.tax.ny.gov) and with an accountant/tax adviser for details on eligibility for the credit provided in the law, regardless of whether the Installer/Contractor has provided information regarding the expected tax benefits (real property, federal or state tax incentives, or sales and use tax exemptions).

Net Metering: Customers are encouraged to consult with their local utility regarding eligibility for net metering.

Consumer Information: New York consumers and customers are encouraged to consult the New York State Office of the Attorney General web site for consumer information:
http://www.ag.ny.gov/bureaus/consumer_frauds/tips/home_improvements.html

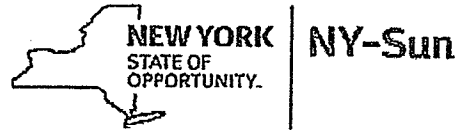
The NYS Consumer Protection Board offers additional information with the following publications:
<https://www.dos.ny.gov/consumerprotection/publications.html>

Communication with Customer: Installer and/or Contractor and Customer agree that NYSERDA may, at NYSERDA's discretion, communicate by voice and/or written format with any PV System Customer with respect to any matter relevant to a proposed or installed PV System. Such communications may be in reply to an inquiry from a Customer or at NYSERDA's initiation.

Disclaimer: The Customer understands that neither NYSERDA nor the State of New York: (1) endorse any Contractor or Installer; or (2) guarantee, warranty, or in any way represent or assume liability for any work proposed or carried out by a Contractor or Installer. Additionally, NYSERDA is not responsible for assuring that the design, engineering and construction of the project or installation of any solar electric generation system is proper or complies with any particular laws, regulations, codes, licensing, certification and permit requirements, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the solar generation systems or the adequacy or safety of such measures.

The following term will apply ONLY to NY-Sun supported PV projects under the Commercial/Industrial (>200 kW) Incentive Program

Non-Residential Energy Assessment: For the Commercial/Industrial (>200 kW) Program, the energy assessment is an ASHRAE level 1 walk through analysis, unless the customer is located in load zone J in which case the Contractor must submit the electric customer's Energy Star score as required under PlanNYC.



NY-Sun INCENTIVE PROGRAM ADDENDUM to AGREEMENT

Customers will not be required to benchmark or implement energy efficiency measures as a pre-requisite for receiving a PV incentive.

The following terms will apply ONLY to NY-Sun supported PV projects under the Residential/Small Commercial (<200 kW) program:

Incentives are only available for the installation of new equipment and PV Systems that have not been installed (partially or completely) prior to the *Project Application* achieving a status of "Submitted via Internet." Incentives will not be provided directly to Customers but are paid to the Contractor, who must apply the entire approved amount to the Customer's cost via a corresponding reduction in Customer's Total System Cost or total payments. The Incentive Payment Request Form must be signed by the Installer and/or Contractor and Customer.

Cost Estimate/Total System Price: The Customer has relied upon the Installer/ Contractor to include any and all costs associated with the complete installation of the proposed PV system in the Agreement. If additional costs are sought from the Customer, the Agreement may be cancelled without penalty and the customer may seek a full refund of any deposit paid to Contractor or costs the Customer incurred under the Agreement, less any reasonable site visit fees charged by the Contractor.

Incentive Estimate: If the Installer/ Contractor does not submit a completed Project Application to NYSERDA, or if the Project Application (a) is not approved by NYSERDA or (b) if NYSERDA approves a lower incentive, the Customer may terminate the Agreement without penalty and seek a full refund of any deposit paid to Installer/Contractor or costs he or she incurred under the Agreement, less any reasonable site visit fees charged by the Contractor.

Incentives: the Contractor cannot collect the value of the incentive upfront and reimburse the customer upon completion of the project, or upon receipt of the NYSERDA incentive.

Review of System Design: NYSERDA will review the design of the PV System considering issues including, but not limited to, system layout, orientation, shading, expected output, etc. NYSERDA approval of the Project Application is contingent on adherence to the proposed system design. Installers must receive approval from NYSERDA for any material modification of the proposed system or its components, or the incentive may be revoked.

Losses: All potential system output losses (after all equipment losses are applied) associated with shading, system orientation, tilt angle, etc. may not exceed 20% of optimal system output to receive the full incentive. Such losses must be detailed in each application package using industry accepted shading and orientation tools, verifiable assumptions and calculations. Systems with losses greater than 20% of optimal output due to shading and orientation issues may be considered on a case-by-case basis. However, any available incentives for these systems will be prorated by output loss. In cases where trees or any other obstruction must be removed or moved in order to meet the program rules, incentive payments will not be made until a new shading analysis and photos, verifying that the obstruction(s) have been removed, are reviewed and approved by NYSERDA. Any trees or obstructions must be clearly labeled in the site map.

Warranty for Purchase Agreements: Both the Eligible Installer and the Contractor shall offer a full/transferable warranty to the purchaser of the PV System installed under this Customer Purchase Agreement



NY-Sun

NY-Sun INCENTIVE PROGRAM ADDENDUM to AGREEMENT

for a period of five (5) years after the Eligible Installer/Contractor has completed the installation and NYSERDA's final approval has been provided. This warranty covers all components of the system against breakdown or degradation in electrical output of more than ten percent from their original rated electrical output. This warranty covers the full cost, including labor and repair or replacement of defective components or systems. If a battery back-up is installed under this Agreement, the Eligible Installer and the Contractor shall offer a full warranty to the purchaser for the battery system for a period of 2 years after installation. This warranty covers the battery system against breakdown and covers the full costs, including labor and repair or replacement of the battery.

Warranty for PPA/Leases: At a minimum, the Contractor shall offer a production guarantee to the Customer for the initial term of this Agreement. This production guarantee will provide the customer with compensation if the system produces less than the guaranteed output as specified in the PPA or lease agreement. Guaranteed output may not allow cumulative degradation in electrical output of more than one percent per year from the original rated electrical output for the initial term of this agreement. Under no circumstance will Customers be responsible for any labor and repair or replacement costs of defective components or systems over the initial term of this Agreement. Should the customer sell the residence at which this solar facility is located, the production guarantee is fully transferrable to a new lessee.

Green Jobs Green New York (GJGNY) Financing: Should an eligible residential customer who chooses to access GJGNY financing to pay for the purchase of their PV system be unable to proceed with installation of the PV system, due to either the system not meeting the Program's eligibility requirements, or the customer is denied low-interest financing, the customer may terminate the Agreement without penalty and seek a full refund of any deposit paid to Installer/Contractor or costs he or she incurred under the Agreement, less any reasonable site visit fees charged by the Installer/Contractor.

PV system completion/commissioning: The Contractor/Installer agrees to complete the installation of the PV system, and request all necessary inspections, within 210 days of NYSERDA's approval of the Project Application. Unless written approval of an extension has been issued by NYSERDA, the Contractor will be required to return any and all incentive payments to NYSERDA if this milestone has not been met.

Clipboard Audit for Residential Applications: The Installer/Contractor agrees to complete a clip board audit consisting of two main components: an interview of the home/building owners to ascertain energy use habits, and identify potential energy efficiency measures, especially low- and no-cost measures that could reduce the electricity load of the building. The Participating Contractor shall conclude the *Clipboard Audit* with a homeowner debriefing and provide the homeowner with a copy of the *Clipboard Audit Report* (Report). Customers will not be required to implement the energy efficiency measures identified in the *Clipboard Audit* as a pre-requisite to receiving an incentive through the PV Program.

Non-Residential Energy Assessment: For the Residential/Small Commercial (<200 kW) Program, the Contractor/Installer will provide non-residential building owners with information on Energy Star's Portfolio Manager Benchmarking Tool or other equivalent tool and, if requested by the building owner, assist them to enter utility bill information into the Tool in order to produce an EUI (Energy use index)⁶ and, where applicable, an Energy Star score. Customers will not be required to benchmark or implement energy efficiency measures as a pre-requisite for receiving a PV incentive.



NY-Sun

**NY-Sun INCENTIVE PROGRAM
ADDENDUM to AGREEMENT**

General Business Law: If this Agreement is deemed to be a Home Improvement Contract under the NYS General Business Law §770, et seq., Customer is entitled to various notices. A description and explanation of this law can be accessed at <http://www.dec.ny.gov/lands/5341.html> This Agreement may also be subject to the federal Consumer Leasing Act (15 USC 1667 et. seq). <http://www.federalreserve.gov/boarddocs/supmanual/cch/leasing.pdf>

Statement of Acknowledgement: By signing, all parties acknowledge that they have read and understand all of the above information and requirements and agree to abide by them.

Installer/Contractor: By signing below, the Installer and/or Contractor confirm that there is a fully-executed Agreement to install the PV project that has been signed by both Installer/Contractor and Customer and that the costs and incentives stated on the NYSERDA approved application for incentive funding are complete and accurate. The Installer and/or Contractor is responsible for keeping this document on file. NYSERDA may request, at any time, that a signed copy of this addendum be provided.

Print Customer Name County of Ulster by Marc Rider
Customer
Signature *Marc Rider* Date 5/15/2015

Contractor Company Name SolarCity Corporation
Contractor Name (Print) Lyndee Rive
Contractor Signature* *[Signature]* Date May 21, 2015

*If executed by Installer, Installer and Contractor certify that Installer is authorized by Contractor to do so.

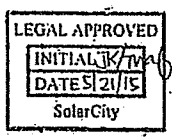


Exhibit 7
Form of Amendment



Amendment to
Solar Power Purchase Agreement

Purchaser:		Seller:	
Name and Address	Ulster County 244 Fair Street, P.O. Box 1800 Kingston, NY 12402 Attention: Marc Rider	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(845) 340-3805	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	mrid@co.ulster.ny.us	E-mail	Contracts@solarcity.com
Facility Ownership	Purchaser has a real property interest in the Facility		Contractor's License Numbers NY: No State License Required
Project Name	Ulster County Landfill		

The Solar Power Purchase Agreement dated _____, 2015 (the "Agreement"), between Purchaser and Seller is hereby amended effective when executed by the Parties below as follows:

Exhibit 4, Section 8(a) is replaced in its entirety with the following,

a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "License Term"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties.

Exhibit 4, Section 14(c)(1) is replaced in its entirety with the following,

(1) **License.** Purchaser has title to or a leasehold or other property interest in the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.

If a conflict or inconsistency arises between the provisions of this Amendment and the Agreement the provisions of this Amendment shall prevail.

Signature page follows

Purchaser: Ulster County

SolarCity Corporation

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____