

SOLAR ENERGY POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (this "PPA" or "Agreement") is made and entered into as of this ____ day of _____, 2023 (the "Effective Date"), by and between Calibrant NY II, LLC a Delaware Limited Liability Company] ("Seller") and County of Albany, an [Insert Customer identifier, i.e. Delaware Corporation, NJ School District, etc.] ("Customer"). Seller and Customer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, concurrently herewith, Customer and Seller are entering that certain Site Lease Agreement (the "Site Lease") pursuant to which Seller agrees to lease a portion of Customer's premises located at 897 Watervliet Shaker Rd, Colonie, NY 12205 (the "Premises") and more particularly described in Exhibit A attached hereto.

WHEREAS, Seller intends to install and operate a solar energy facility (the "System") as more particularly defined in Exhibit B hereto.

WHEREAS, Seller desires to sell to Customer, and Customer desires to purchase from Seller, all of the Energy Output generated by the System during the Term in accordance with the terms and conditions of this PPA.

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in the Schedule of Definitions and Rules of Interpretation attached hereto as Schedule 1 and made an integral part of this PPA by this reference.

1.2 Rules of Interpretation. The rules of interpretation in the Schedule of Definitions and Rules of Interpretation shall apply to this PPA unless expressly provided otherwise.

ARTICLE II TERM

2.1 Term. The initial term of this PPA (the "Initial Term") shall commence on the Effective Date and shall be in effect until 00:00 hours Eastern Time on the 25th anniversary of the Commercial Operation Date. The Term may be extended for additional periods by written agreement of the Parties executed no less than thirty (30) days prior to the expiration of the then current Term (each such extension, an "Extension Term"), with each such Extension Term expiring at 00:00 hours Eastern Time on the respective anniversary of the Commercial Operation Date, unless earlier terminated by either Party pursuant to Section 9.2. The Initial Term and each Extension Term may not be terminated by either Party, except as expressly set forth in this PPA.

2.2 Conditions Precedent. The respective rights and obligations of the Seller under this PPA are expressly conditioned upon the satisfaction in full (or written waiver) of all of the following conditions (the "Seller Conditions"):

(a) Customer and Seller shall have entered into the Site Lease and any additional documents required thereunder;

(b) If necessary for the sale of Energy Output pursuant to the terms of this PPA, Customer shall have entered into an interconnection agreement with the local utility and received approval of the final System design;

(c) Seller shall have entered into all applicable contracts required for the System to be placed in service;

(d) Seller shall have obtained all necessary permits, licenses and other approvals required by Applicable Law to install and operate the System;

(e) Customer shall have obtained, and provided Seller with proof of insurance required to be maintained by Customer pursuant to the terms of this PPA;

(f) Seller is not and will not be subject to regulation as an "electric company" or similar term under [State] utility laws prior to, on, or following operation of the System;

(g) Seller shall have completed a physical inspection of the Premises including, if and as applicable, environmental, geotechnical, and structural engineering studies as necessary to confirm the suitability of the Premises for the System and shall have confirmed such suitability to its satisfaction in its sole discretion All studies commissioned or obtained by Seller relating to 2.2 (g) will be provided to Customer;

(h) Seller shall have entered into a Payments In Lieu Of Taxes ("PILOT") Agreement with the County of Albany, Town of Colonie, and South Colonie Central School District.

(i) Customer shall have the established credit capacity to enter into this PPA and acceptable to Seller, in its sole discretion.;

(j) Seller shall have received the results, which shall be reasonably satisfactory to Seller, of a recent Uniform Commercial Code and title search of the Premises and each owner, lessor, and lessee of the real property underlying the Premises in all applicable jurisdictions;

(k) Seller shall have obtained confirmation from the applicable governmental authorities that the System will be eligible for, or to receive or generate, Environmental Attributes and tax incentives generally applicable to solar generating systems similar to the System;

(l) Seller shall have received written confirmation from any person holding a mortgage, lien, or other encumbrance over or interest in the Premises, or any portion thereof, that such person shall recognize Seller's rights to the System and under this Agreement; and

(m) Approval by Seller's Financing Parties of each of (i) this Agreement, (ii) the Site Lease, (iii) the construction agreement for the System.

(n) Seller shall have received approval from the Federal Aviation Administration to construct, operate, and maintain the System, as well as any consents, easements, or other access or encroachment rights required from the Federal Aviation Administration with respect to the System and Premises.

Seller shall provide written notice to Customer of the satisfaction or waiver of the Seller Conditions ("CP Notice"). Customer shall approve the CP Notice within five (5) Business Days of receipt of the CP Notice. If Customer does not provide its approval (or objection) within five (5) Business Days, Customer shall be deemed to have approved the CP Notice and the Seller Conditions shall be deemed satisfied.

If the Seller Conditions are not satisfied by September 15, 2023, Seller may terminate this PPA without penalty and without triggering the default provisions of Article 9 or incurring any liability under this PPA whatsoever. Alternatively, in the event that the Seller Conditions are not satisfied by such date, the Parties may agree in writing to amend this PPA to extend the time within which to satisfy the Seller Conditions. If the cause for termination under this clause is the inability to satisfy 2.2(a), (e), (i) or (l), the Seller shall invoice the Customer for the Seller's reasonable development costs and expenses in the amount of \$150,000 which shall be paid by the Customer within thirty (30) days following Customer's receipt of the invoice.

2.3 Notice of Commercial Operation. Seller shall notify Customer when the System is capable of Commercial Operation and shall in such notice certify to Customer the Commercial Operation Date.

2.4 Removal of System at End of Term. Except as otherwise provided herein, Seller shall be entitled to, within 180 days following the end of the Term, and at Customer's sole cost and expense, remove the System from the Premises. Customer shall allow Seller and its agents, consultants, and representatives to have access at all reasonable times to the Premises and the System for purposes of such removal.

Customer shall not make any alterations or repairs to the System which could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Customer wishes to make such alterations or repairs, Customer 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 Customer in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Customer shall be responsible for all damage

to the System caused by Customer 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 removal and replacement of the System after completion of Customer's alterations and repairs, shall be done by Seller or its contractors at Customer's sole cost. In addition, Customer shall pay Seller all payments that Customer would have made to Seller hereunder for all Energy Output that would have been produced and delivered during such disconnection or removal. All of Customer's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

2.5 As-Available Energy. The parties acknowledge that the Energy Output delivered hereunder is delivered "as available" to Customer and Seller's failure to deliver Energy Output for any reason shall not give rise to any default, claim or damages by Customer hereunder.

2.6 Survival. Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this PPA prior to and upon termination of this PPA, (b) as provided in Article 13, and (c) that the obligations of the Parties under this PPA with respect to indemnification will survive the termination of this PPA (but only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the termination of this PPA).

ARTICLE III PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

3.1 Purchase and Sale of Energy. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Initial Term and any Extension Term, Seller shall make available to Customer and sell, and Customer shall take delivery of and purchase, at the Delivery Point, all of the Energy Output, whether or not Customer is able to use such Energy Output. Any Energy Output delivered by Seller at the Delivery Point that is in excess of the Energy Output required by Customer at the Premises will be delivered to the Local Distribution Company at the Delivery Point. Neither Party shall seek to change any of the rates or terms of this PPA by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms during the Initial Term or any Extension Term of this PPA.

3.2 Price for Energy Output; Payment. Customer shall pay Seller for the Energy Output, as measured by the Project Metering Device, at the applicable Energy Payment Rate as set forth on Exhibit C (the "Energy Payment Rate"). The payment to be made by Customer to Seller shall equal the Energy Output for the relevant period multiplied by the Energy Payment Rate for such period. Seller shall invoice Customer monthly for Energy Output, and Customer shall remit payment within thirty (30) days after the date of Seller's invoice. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

3.3 Test Energy. Prior to the Commercial Operation Date, Seller shall make

available to Customer and Customer shall take delivery of, at the Delivery Point, any Energy Output produced by the System (such Energy Output delivered prior to the Commercial Operation date being referred to herein as “Test Energy”). Customer shall pay Seller for the Test Energy at a rate equal to one hundred percent (100%) of the Energy Payment Rate that would otherwise be applicable on the Commercial Operation Date.

3.4 Payment for Curtailed Energy. If Customer curtails or otherwise fails to accept Energy Output produced, or that would otherwise have been produced, and delivered to the Delivery Point, but for such curtailment or failure to accept, Customer shall pay to Seller at the Energy Payment Rate (including any Governmental Charges) for all Energy Output that would have been produced and delivered to the Delivery Point but for Customer’s curtailment or failure to accept (“Curtailed Energy Output”). In such circumstance, Seller shall determine the Curtailed Energy Output by utilizing site specific irradiance data and projecting the output of the System for the time period of the Customer curtailment event. If such site-specific irradiance data is not available to Seller, Seller shall estimate the Curtailed Energy Output by applying actual production results over similar, relevant period(s) as reasonably determined by Seller. Seller shall provide an auditable report to Customer that includes the methodology, the data utilized and associated calculations of the Curtailed Energy Output to support invoicing for this period.

3.5 Title and Risk of Loss. Title to and risk of loss of the Energy Output will pass from Seller to Customer at the Delivery Point. Seller warrants that it will deliver the Energy Output to Customer at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

3.6 Governmental Charges. Customer shall be responsible for, and pay, all Governmental Charges imposed on the delivery and sale of Energy Output by Seller to Customer, whether imposed before, upon or after the delivery of Energy Output to Customer at the Delivery Point. Both Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, promptly upon Seller's request therefore, Customer shall provide Seller with all necessary documentation to evidence such exemption or exclusion. For avoidance of doubt, in developing the Energy Payment Rate, Seller has assumed the System will be exempt from property taxes pursuant to New York State Real Property Tax Law Section 487 and that no PILOT will be assessed. In the event property tax or PILOT payments are imposed on the System, the Parties shall negotiate in good faith to agree on an adjustment to the Energy Payment Rate to compensate Seller for its increased cost over the remainder of the Initial Term.

3.7 Station Power. Customer shall provide Seller, at no cost to Seller, with Station Power.

ARTICLE IV ENVIRONMENTAL ATTRIBUTES

4.1 Title to Environmental Attributes. Notwithstanding the purchase and sale of

Energy Output pursuant to Section 3.1, all Environmental Attributes relating to the System or the Energy Output shall remain the property of Seller. Seller shall have all right, title, and interest in and to any and all Environmental Attributes that relate to the System and the Energy Output during the Initial Term and any Extension Term, and Customer shall have no right, title or interest in or to any such Environmental Attributes.

4.2 Reporting of Ownership of Environmental Attributes. Customer shall not report to any Person that any Environmental Attributes relating to the Energy Output belong to any Person other than Seller.

4.3 Capacity Rights. Notwithstanding the purchase and sale of Energy Output pursuant to Section 3.1, all Capacity Rights shall remain the property of Seller, Seller shall have all right, title and interest in and to any and all Capacity Rights that relate to the System during the Initial Term and any Extension Term.

ARTICLE V CONSTRUCTION AND INSTALLATION OF THE SYSTEM

5.1 Installation. Subject to Section 5.2, Seller will cause the System to be designed, engineered, installed and constructed (a) taking into consideration Customer's historical electrical generation requirements, (b) based on inspections of the Premises and studies undertaken by Seller, and (c) in material accordance with Prudent Industry Practices, applicable permits, all applicable local, state, or federal laws or requirements, as well as the terms of this PPA and the Site Lease. The description of the System design shall be incorporated into Exhibit B. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises, and if the solar modules and other major System assets documented in Exhibit B are not readily available when the System is to be installed, Seller may make reasonable substitutions of such equipment at Seller's sole discretion. Subject to the terms of the Site Lease and to the extent commercially practical, Seller shall perform the installation of the System in a manner that minimizes inconvenience to, and interference with, Customer. Notwithstanding the foregoing, in the event that Seller determines in its sole discretion that it is unable to install or interconnect the System at the Premises, it shall be under no obligation to do so, and this PPA shall terminate and be of no further force and effect upon written notice from Seller to Customer to that effect.

5.2 Utility Approvals. Seller shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Notwithstanding the foregoing, Customer agrees to assist and cooperate with Seller in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including but not limited to the submission of applications for interconnection of the System with the local electric utility, if any. Customer shall not make any material changes to its electrical equipment at the Premises after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility or the local inspector fail to approve the

interconnection of the System with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit B in connection with the Premises, Seller may terminate this PPA immediately subsequent to notification from the local utility of such failure to approve or additional requirement without further liability to Seller. The Parties shall not be obligated to proceed with the installation of the System if the applicable utility or inspector approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

If a Local Distribution Company connection becomes deactivated or the System becomes disconnected such that the System is no longer able to produce or deliver energy to the Local Distribution Company, Customer shall promptly notify Seller of the deactivation or disconnection and will cause the reactivation and restoration of the connection promptly after the cause of the disconnection is addressed. Customer will pay Seller any lost revenues associated with the period of such deactivation, provided that the reason for the deactivation or disconnection is not caused or related to any unexcused action or inaction of Seller, or any action or inaction beyond the control of Customer.

5.3 Energy Delivery. The Commercial Operation Date shall be the date that Seller has given written notice to Customer that the deliveries of Energy Output have commenced, provided that Customer is under no obligation to accept energy delivered to the Delivery Point, other than Test Energy, unless and until the following have occurred:

(a) Seller shall have provided a Notice of Commercial Operation for the installation of the System;

(b) Seller shall have obtained satisfactory evidence of insurance coverage for the System; and

(c) All permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect.

Notwithstanding anything to contrary, Seller shall not have any liability to Customer for delays to the Commercial Operation Date.

5.4 Customer Cooperation and Responsibilities. Customer will cooperate with Seller and any third parties with whom Seller contracts by providing access to the Premises during working hours without unreasonable restrictions and coordinating any required installation services, including load isolation and/or electrical shutdown for purposes of tie-in. Customer shall cooperate with Seller in obtaining and maintaining all permits and licenses required for Commercial Operation as further described in Section 5.2.

5.5 Hazardous Materials; Unexpected Premises Conditions.

(a) The Customer represents and warrants that it has disclosed in writing to Seller, prior to the execution of this PPA, all Hazardous Materials present, potentially present, or likely to become present, at, on, above, below, or near the Premises and Customer agrees to accomplish the Remediation of such, at its own cost and expense within thirty (30) days

following execution of this PPA. Except as disclosed in accordance with the foregoing, the Customer represents and warrants that there are no Hazardous Materials at, on, above, below, or near the Premises. Seller will notify the Customer immediately if it discovers or suspects the presence of any Hazardous Materials at, on, above, below, or near the Premises.

(b) If Seller encounters (i) unforeseeable groundwork at the Premises (including, excavation/circumvention of underground obstacles), (ii) Hazardous Materials at the Premises, (iii) unforeseeable conditions at the Premises, or (iv) the inaccuracy of any information provided by Customer and relied upon by Seller, then such conditions shall be deemed to constitute a change in the construction of the System equivalent to a material change in the PPA. Seller will receive additional compensation through an increase in the Energy Payment Rate, considered extra services, for any incremental costs incurred by Seller in connection with such conditions. Additionally, in connection with any Hazardous Materials discovered at the Premises, Seller may suspend further performance of its obligations hereunder until the Customer shall have accomplished the Remediation at the Customer's sole cost and expense. Any suspension by Seller pursuant to this section shall not relieve the Customer of its obligations hereunder.

(c) The Customer represents and warrants that it has provided to Seller a copy of all current jobsite safety policies, including but not limited to lock-out and tag procedures, laboratory procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.

5.6 Performance Assurance. If Seller at any time has reasonable grounds to believe that Customer's creditworthiness poses a material risk to its performance under this PPA, Seller may, by written notice to Customer, require Customer to provide Performance Assurance in an amount specified by Seller within five (5) Business Days of such written notice.

5.7 Seller's Use of Contractors. Seller may use contractors in the performance of Seller's obligations under this PPA. Seller shall be responsible for the performance of its contractors. Seller shall ensure that its contractors carry insurance coverage at sufficient levels generally expected of such a contractor in relation to the work that the contractor will be performing. Seller shall ensure that all contractors under contract with the Seller and performing work at the Premises shall add the Customer as an additional insured on each applicable contractor's general liability policy. Seller's contractors shall comply with the County of Albany Standard Agreement Provisions attached hereto.

ARTICLE VI OWNERSHIP; MAINTENANCE OF SYSTEM; INTELLECTUAL PROPERTY

6.1 Ownership of System by Seller. Seller shall own the System, and shall be entitled to all ownership benefits of the System, including, without limitation, the right to own, claim and retain any and all currently existing and future federal, state, or local tax benefits or other state or federal financial incentives associated with the ownership of the

System, including any federal income tax credits or grants, as well as any and all state or local incentives for the installation of solar energy facilities or the production of electricity from renewable energy sources. Seller shall be entitled to file as a protective notice as to Seller's ownership of the System any reasonably necessary Uniform Commercial Code financing statements with such authorities and with any filing office as Seller may determine are reasonably necessary or advisable to protect Seller's interest in the System and/or this PPA. Customer authorizes Seller to file (and Customer shall execute if requested by Seller) any Uniform Commercial Code financing statements (including any amendments thereto) or similar filings with such authorities and with any filing offices as Seller may determine are necessary or advisable to protect Seller's interest in the System and/or this PPA. Customer shall not directly or indirectly cause, create, incur, assume, or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Customer shall promptly notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrances, 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 damages, costs, and expenses (including reasonable attorneys' fees) incurred by Seller in connection with such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, including the discharge and release thereof. Seller shall comply with the County of Albany Standard Agreement Provisions attached hereto.

6.2 Lease of Premises; Maintenance of Premises.

(a) Pursuant to the terms and conditions of the Site Lease being entered into concurrently herewith, the Parties acknowledge and agree that Seller is leasing or has obtained a license to the portion of Premises upon which the System is located.

(b) Customer shall maintain the physical security of the Premises and the System. Customer shall not conduct activities on, in, or about the Premises that have a reasonable likelihood of causing damage, impairment, or otherwise adversely affecting the System.

6.3 Maintenance of System by Seller. Seller shall maintain the System. Seller and its agents, consultants, and representatives shall have access at all reasonable times (including under emergency conditions) to the Premises and the System, all System operations, and any documents, materials and records and accounts relating thereto for purposes of inspection and maintenance of the System. During any inspection or maintenance of the System, Seller, and its agents, consultants and representatives shall comply with Customer's reasonable safety and security procedures, and Seller and its agents, consultants and representatives shall conduct such inspection and maintenance in such a manner as to cause minimum interference with Customer's activities.

6.4 Expansion; Modification. Seller may choose at any time to expand or modify the System including, among other reasons (none of which shall be prohibited by this PPA) adding solar power-generating equipment and or interconnection facilities and increasing the electrical capacity. Such expansion or modification may require additional space at the Premises. Notwithstanding the above, Seller shall not expand or modify the

System (except as otherwise contemplated in this PPA) without Customer's consent, which shall not be unreasonably withheld. Customer shall consider in good faith any request by Seller to provide any additional space at no cost to Seller if required by Seller, provided and any such request will require the approval of the Albany County Legislature.

6.5 Intellectual Property.

(a) Seller hereby grants the Customer a royalty-free, non-transferable, perpetual, nonexclusive license to use any of Seller's Intellectual Property solely as incorporated into the System and System Software necessary for the System to be used under this Agreement. Under such license, and following agreement to be bound by Article 13.1, Authorized Users shall have a non-exclusive, non-transferable, limited license right to:

- (i) Use, in object code form only, the System Software;
- (ii) Make and retain archival and emergency copies of such System Software (subject to any confidentiality provisions) except if the System Software is embedded in the System; and,
- (iii) Use all such System Software, provided however, the System Software shall not be used or relied upon by any parties other than Authorized Users, and such use shall be limited to the particular System and the Premises. All System Software provided to the Customer are for Authorized Users' use only for the purposes identified herein.

(b) In consideration of such license, Customer agrees not to reverse engineer the System or System Software to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such System or System Software even to the extent such restriction is allowable under Applicable Law.

(c) Nothing contained in this Agreement shall be interpreted or construed to convey to the Customer ownership of the Intellectual Property of the Seller or any third party incorporated into the System or System Software. Customer agrees to take delivery of any System Software subject to any applicable Seller or third party end-user license agreement ("EULA") accompanying such System Software, or if no EULA or third party license accompanies such System Software, the EULA posted at www.usa.siemens.com/btcpseula (Seller's EULA web site) for such System Software. Notwithstanding the foregoing, in the event of any inconsistency between the terms of the Agreement and the EULA for such System Software, the terms of the Agreement shall govern over the EULA except for the use and metric restrictions set forth in the EULA for such System Software shall take precedence and supersede the terms of the Agreement.

ARTICLE VII METERING DEVICES AND METERING

7.1 Metering Equipment; Customer to Maintain Utility Service. Seller shall install, own, operate and maintain the Project Metering Device. In addition, Customer shall arrange for the Utility Metering Device to be installed or maintained at the Premises. For the duration of the term of this PPA, Customer shall maintain delivery service in

Customer's name from the Local Distribution Company at the Delivery Point to supplement the Energy Output provided to Customer and to provide Station Power for Seller.

7.2 Measurements. Readings of the Project Metering Device shall be conclusive as to the amount of Energy Output; provided that if the Project Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurement of Energy Output shall be determined in the following sequence: (a) by measurements of Energy Output recorded by the Utility Metering Device net of any energy consumed by the System from the Local Distribution Company through the Utility Metering Device; (b) by estimating by reference to quantities measured during periods of similar conditions when the Project Metering Device was registering accurately; or (c) if no reliable information exists from the Utility Metering Device or as to the period of time during which such Project Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 7.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Project Metering Device through the date of the adjustments, provided, however, that, in the case of clause (ii), the period covered by the correction under this Section 7.3 shall not exceed six months.

7.3 Testing and Correction; Customer's Right to Conduct Tests.

(a) Each Party and its consultants and representatives shall have the right to witness any Project Metering Device test to verify the accuracy of the measurements and recordings of the Project Metering Device. Seller shall provide at least twenty (20) days' prior written notice to Customer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test, and shall, at the request of Customer, provide Customer with copies of such written report not later than thirty (30) days after completion of such test. Seller shall bear the cost of the annual testing of the Project Metering Device and the preparation of the Project Metering Device test reports.

(b) The following steps shall be taken to resolve any disputes regarding the accuracy of the Project Metering Device:

(i) If either Party disputes the accuracy or condition of the Project Metering Device, such Party shall so advise the other Party in writing.

(ii) Seller shall, within fifteen (15) days after receiving such notice from Customer or issuing such notice to Customer, advise Customer in writing as to Seller's position concerning the accuracy of such Project Metering Device and Seller's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may request a test of the Project Metering Device.

(iv) If the Project Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Project Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Project Metering Device under Section 7.3(b)(i) shall bear the cost of inspection and testing of the Project Metering Device.

(v) If the Project Metering Device is found to be inaccurate by more than two percent (2%) or if such Project Metering Device is for any reason out of service or fails to register, then (a) Seller shall promptly cause any Project 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 Output during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 7.2. If as a result of such adjustment the quantity of Energy Output for any period is decreased (such quantity, the "Energy Deficiency Quantity"), Seller shall reimburse Customer for the amount paid by Customer in consideration for the Energy Deficiency Quantity (calculated using the Energy Payment Rate), and shall bear the cost of inspection and testing of the Project Metering Device. If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "Energy Surplus Quantity"), Customer shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of the Project Metering Device.

(c) Customer shall, either directly or through the Local Distribution Company, cause the Utility Metering Device to be maintained, tested, serviced and repaired in accordance with the standards applicable to the Utility Metering Device.

ARTICLE VIII LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; INSURANCE; FORCE MAJEURE

8.1 System Loss.

(a) Subject to Customer's obligation to indemnify Seller set forth in Section 11.1, Seller shall bear the risk of any System Loss.

(b) In the event of any System Loss that, in the reasonable judgment of Seller, results in less than total damage, destruction or loss of the System, this PPA will remain in full force and effect and Seller has the option, at Seller's absolute and sole discretion and sole cost and expense, to repair or replace the System as quickly as practicable. Seller shall be entitled to all proceeds of insurance with respect to the System.

(c) In the event of any System Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the System, Seller shall, within forty-five (45) days following the occurrence of such System Loss, notify Customer whether Seller is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Seller notifies Customer that Seller is not willing to repair or replace the System, this

PPA and the Site Lease will terminate automatically effective upon the delivery of such notice, and Seller shall be entitled to all proceeds of insurance with respect to the System, provided, however, that proceeds paid on account of damage to the Premises shall be paid to Customer, and provided, further, that there shall be no further liability to Seller.

8.2 Insurance.

(a) Each Party will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party (an “insuring Party”) will include the other Party as an additional insured in each such policy to the extent of the insuring Party’s indemnity obligations under Section 11.1(a)(ii). For the avoidance of doubt, Seller's property insurance shall cover the System and Customer's property insurance shall cover the Premises upon which the System is located. Limits can be met through a combination of primary commercial general liability and follow form excess policies.

(b) Customer and Seller’s contractors will maintain worker's compensation and employer's liability insurance, including Stop Gap coverage, in compliance with Applicable Laws covering their respective employees. The limits of employers' liability insurance shall not be less than \$1,000,000.

(c) From commencement of construction of the System until the Commercial Operation Date, Seller, or its contractors, will maintain at its own expense property insurance written on a builder’s “all-risk” or equivalent policy form on a replacement cost basis. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements. Seller shall pay costs not covered because of deductibles or retentions. Such coverage shall be occurrence based and shall include Customer as a loss payee with respect to physical loss or damage to the Premises. Seller shall be loss payee for physical loss or damage to the System. Such coverage shall terminate upon Commercial Operation.

(d) On the Commercial Operation Date, Seller shall maintain insurance against any System Loss, including business interruption insurance with loss payable to Seller.

(e) The provisions of this PPA shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties shall not be limited by insurance.

(f) In regard to insurance maintained by either Party, including any property insurance, each such Party hereby waives, for itself and its insurers, all rights of recovery and subrogation which may arise against the other Party as a result of a payment made by an insurer.

8.3 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this PPA until such reasonable time that the Force Majeure no longer prevents performance by the Claiming Party; provided, however, that if the Customer is the Claiming Party, the Customer shall not be excused from (a) the Customer's obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure and (b) the Customer's obligation to make payments for Energy Output generated by the System and delivered to the Delivery Point, whether before or after the Force Majeure. The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations. Except as otherwise provided in Section 8.1, the non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

8.4 Change in Law. If any Change in Law occurs that (a) is generally applicable to electric generating facilities similarly situated to the System, including the System, and (b) actually, directly, and unavoidably increases the operating or maintenance costs of the System, the Energy Payment Rate shall be adjusted equitably to compensate Seller for such increased costs over the remainder of the Term. The Parties shall negotiate an equitable adjustment to the Energy Payment Rate.

ARTICLE IX EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) Customer's failure to make, when due, any payment required under this PPA for Energy Output delivered to the Delivery Point, and such remains unremedied for a period of five (5) days from the due date thereof;

(b) The failure to provide, when due, any Performance Assurance required under this PPA, if such failure is not remedied within five (5) days from the due date thereof;

(c) The breach of any representation or warranty or any material covenant or obligation set forth in this PPA (except to the extent constituting a separate Event of Default), if such breach is not remedied within thirty (30) days after receipt of written notice (or such longer period not to exceed sixty (60) days, provided such breach is capable of being cured within such sixty (60) day period and the Defaulting Party is diligently attempting performance);

- (d) Such Party becomes Bankrupt;
- (e) Such Party fails to provide or maintain in full force and effect any required insurance;
- (f) Lessor (as defined in the Site Lease), makes a Transfer (as defined in the Site Lease) without prior written notice to Seller, or such Lessor transferee does not agree to be bound by the terms of the Site Lease, or both; or,
- (g) An Event of Default (as defined in the Site Lease) has occurred under the Site Lease.
- (h) Customer's breach of its obligations set forth in Section 5.5.
- (g) Customer's breach of its obligations under the interconnection agreement with the local utility, or Customer otherwise performs in a way that prevents the delivery of electric energy from the System.

9.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing (except as otherwise provided in Section 9.3), the other Party (the "Non-Defaulting Party") will, without limiting the rights or remedies available to the Non-Defaulting Party under this PPA or Applicable Law, have the right:

- (a) By notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than forty-five (45) days after the date such notice is effective, as an early termination date ("Early Termination Date") in respect of this PPA;
- (b) To withhold any payments due to the Defaulting Party under this PPA; and
- (c) To suspend performance due to the Defaulting Party under this PPA.

In the event that the Non-Defaulting Party designates an Early Termination Date, this PPA will terminate as of the Early Termination Date.

9.3 Customer Rights Upon Termination for Default. In the event that Customer is the Non-Defaulting Party, and that Customer elects to terminate this PPA as provided in Section 9.2, Customer will be entitled, in its sole and absolute discretion to require that Seller remove the System or to remove and have stored the System at Seller's sole cost and expense if Seller fails to remove the System within forty-five (45) days after the Early Termination Date.

9.4 Seller Rights Upon Termination for Default. In the event that Seller is the Non-Defaulting Party, and that Seller elects to terminate this PPA as provided in Section 9.2, Seller will be entitled, in its sole and absolute discretion, to:

(a) Require that Customer pay the Default Termination Value calculated as set forth on Schedule 2 hereto;

(b) Continue to sell all electricity produced by the System to Persons other than Customer and recover from Customer any loss in revenues resulting from such sales, and in connection therewith, Customer shall continue to perform its obligations under the Site Lease, including permitting Seller to utilize the Delivery Point or arrange for an alternative delivery point with the Local Distribution Company;

(c) Remove the System, at Customer's sole cost and expense; and/or

(d) Exercise all other remedies at law or in equity.

The Parties acknowledge that actual damages to Seller in the event this PPA terminates prior to the expiration of the Term as the result of an Event of Default by Customer would be difficult to ascertain, and the payment of the Default Termination Value is a reasonable approximation of damages suffered by Seller as a result of the early termination of this PPA.

9.5 Remedies Cumulative. Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this PPA or at law or in equity.

9.6 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises anyone or more rights and remedies available under this PPA. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE X REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS

10.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) The execution, delivery and performance of this PPA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(b) Subject to all conditions precedent described herein, this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) It is acting for its own account, and has made its own independent decision to enter into this PPA, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) It is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;

(e) It understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates; and

(f) The various charges and fees contained in this PPA are the result of arms' length transactions.

10.2 Customer Representation Regarding Premises. Customer further represents and warrants to Seller that:

(a) Its real property interest in the Premises is fully sufficient for the purposes of this PPA;

(b) To the best of its knowledge following due inquiry, there are no Hazardous Materials existing at, on, above, below, or near the Premises that will require removal, abatement or other corrective action in order for Seller to install, operate and/or maintain the System as identified herein;

(c) The information provided by Customer to Seller as it pertains to the Premises' physical and structural configuration, Customer's planned use of the Premises, and Customer's estimated electricity requirements, is accurate in all material respects; and

(d) Customer has reviewed the design of the System and, assuming proper installation without defects, has satisfied itself that the System will not damage the Premises.

10.3 Acknowledgement Regarding Bankruptcy Code. The Parties acknowledge and agree that, for purposes of this PPA, (a) neither Seller nor Customer is a "utility" as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein such Party is a debtor, and (b) this PPA constitutes a "forward contract" within the meaning of the Bankruptcy Code and agree that each Party is a "forward contract merchant" within the meaning of the Bankruptcy Code.

10.4 Use of Energy. Customer represents and warrants that none of the electricity to be generated by the System will be used to generate energy for the purpose of heating a swimming pool.

10.5 Acknowledgement Regarding Internal Revenue Code. The Parties intend this PPA to be treated as a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code. The Parties intend that neither Customer nor any party related

to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code, and the terms of this PPA shall be construed consistently with the intention of the Parties.

ARTICLE XI INDEMNITY; LIABILITY LIMITATIONS

11.1 Indemnity.

(a) General Indemnity. To the fullest extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend 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 "Indemnitee") from and against any and all Indemnity Claims, whether or not involving a third-party claim, caused by, resulting from, relating to or arising out of (i) any breach of any representation, warranty, or covenant contained in this PPA or the Site Lease by the Indemnitor or any of its directors, officers, employees or agents, or (ii) any negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents; *provided, however*, that the Indemnitor will not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

(b) Notice and Participation in Third Party Claims. The Indemnitor shall give the Indemnitee written notice with respect to any liability asserted by a third party for an Indemnity Claim promptly upon receipt of information of any possible Indemnity Claim or the commencement of such Indemnity Claim. The Indemnitor may assume the defense of any Indemnity Claim, at its sole cost and expense, with counsel designated by the Indemnitor. The Indemnitee may, at the Indemnitee's sole cost and expense, select separate counsel if both Parties are defendants in the Indemnity Claim and the Indemnitee reasonably determines that a conflict of interest exists between the Parties in the defense of such Indemnity Claim such that the Indemnitor cannot effectively defend the Indemnitee. Neither Party shall settle any Indemnity Claim unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonable withheld or delayed.

(c) Hazardous Materials Indemnity. Customer shall indemnify, defend, and hold harmless all of Seller's Indemnitees from and against all Indemnity Claims arising out of or relating to the existence at, on, above, below, or near the Premises of any Hazardous Materials, other than Hazardous Materials that have been introduced or released by Seller or its agents or representatives.

11.2 Liability Limitations.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL EITHER CUSTOMER OR SELLER BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, EVEN IF EITHER

PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) To the fullest extent permitted by Applicable Law, Seller's aggregate liability for any and all claims, losses, damages or expenses arising out of this PPA, or out of any goods or services furnished under this PPA, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited to the total payments made (and, as applicable, projected to be made) by Customer under this Agreement.

ARTICLE XII SYSTEM PURCHASE AND SALE OPTIONS

12.1 Grant of Purchase Option; Exercise. For and in consideration of the payments made by Customer under this PPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Seller hereby grants Customer the right and option to purchase all of Seller's right, title and interest in and to the System Assets, excluding the System Software for which Customer has already obtained a license hereunder, upon the expiration of the Initial Term or the applicable Extension Term on the terms set forth in this PPA (the "Purchase Option"). Customer shall have from between one hundred and eighty (180) days and ninety (90) days prior to the expiration of the Initial Term or then applicable Extension Term (the "Exercise Period") to exercise the Purchase Option. Customer must exercise the Purchase Option, if at all, by providing a notice (an "Exercise Notice") to Seller. Once Customer delivers an Exercise Notice to Seller, such exercise shall be irrevocable. The purchase of the System Assets pursuant to such Purchase Option will, in such case, occur on the day after the conclusion of the Initial Term or then applicable Extension Term (the "Transfer Date"); provided, however, that in the event an Independent Appraiser is used to determine the Purchase Price, the Transfer Date shall occur no later than forty-five (45) days following the date on which the Independent Appraiser issues the Final Determination. The Purchase Price payable by Customer for the System Assets shall be equal to the higher of the Default Termination Value for the last contract year set forth in Schedule 2 or the fair market value as agreed between the Parties, or, if no agreement, as is determined by the Independent Appraiser in accordance with the terms of this Article XII (in either case, the fair market value shall be determined on an "in place" and "in continued use" basis in accordance with definitions and standards set forth by the American Society of Appraisers).

12.2 Customer Request for Appraisal of System Value. If (a) Customer and Seller are not able to agree on a Purchase Price before the end of the Exercise Period, not later than seventy-five (75) days prior to the end of the Initial Term or any Extension Term, or (b) in the Event of Default with respect to Seller in the notice under Section 9.2, Customer may provide a notice to Seller requiring a determination of the Purchase Price (as defined below) in accordance with Section 12.4.

12.3 Selection of Independent Appraiser. Within thirty (30) days of Seller's receipt of a notice provided under Section 12.2, Seller and Customer shall mutually agree upon an Independent Appraiser. If Seller and Customer do not agree upon the appointment of an Independent Appraiser within such thirty (30) day period, then at the end of such

thirty (30) day period Seller and Customer shall notify each other in writing of their respective designation of three proposed Independent Appraisers. Seller and Customer shall each within five (5) Business Days of receipt of such notice strike two of the proposed Independent Appraisers designated by Seller and Customer, respectively, and shall provide notice thereof to the other party. The remaining two proposed Independent Appraisers shall, within two (2) Business Days of each party's notice, select one of themselves to perform the valuation and provide notice thereof to Seller and Customer, provided that if either Seller or Customer still objects to the valuation being performed by such selected Independent Appraiser, then, within two (2) Business Days of the selection notice, such two proposed Independent Appraisers shall select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the parties or another Independent Appraiser) and such third Independent Appraiser shall perform the duties of the Independent Appraiser as set forth herein. Such selection shall be final and binding on Seller and Customer. If no agreement is made as to the selection of an Independent Appraiser, either Party may apply for the judicial appointment of such Independent Appraiser.

12.4 Determination of Purchase Price. The Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Purchase Price (the "Preliminary Determination"). Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Seller and Customer, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Customer shall have the right to object to the Preliminary Determination within thirty (30) days of receiving such Preliminary Determination. Within fifteen (15) days after the expiration of such thirty (30) day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the "Final Determination") to Seller and Customer, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

12.5 Costs and Expenses of Independent Appraiser. Seller and Customer shall each be responsible for payment of one-half of the costs and expenses of the Independent Appraiser.

12.6 Terms of System Assets Purchase. On the Transfer Date (a) Seller shall surrender and transfer to Customer all of Seller's right, title and interest in and to all System Assets and shall retain all liabilities arising from or related to the System Assets prior to the Transfer Date, (b) Customer shall pay the Purchase Price by wire transfer and shall assume all liabilities arising from or related to the System Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System Assets in Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals

and such similar documents as may be reasonably necessary to complete the sale of the System Assets to Customer.

ARTICLE XIII CONFIDENTIALITY; PRESS RELEASES

13.1 Confidentiality. (a) Neither Party will use any Confidential Information for any purpose except such Party's performance under this PPA. Furthermore, neither Party will disclose any Confidential Information to any third party other than the Party's or the Party's Affiliates' actual or prospective Finance Parties, and its or their respective counsel, accountants or advisors (collectively, "Representatives"), who have a need to know such information and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein, provided, however, that a Party may disclose Confidential Information in order to comply with the requirements of any Applicable Law or regulation or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a governmental authority, provided further, however, that each Party will use reasonable efforts to prevent or limit any such disclosure. If a Party receives a subpoena, order, notice, process or other legal process ("Receiving Party") seeking disclosure of the other Party's ("Disclosing Party") Confidential Information, the Receiving Party shall immediately notify the Disclosing Party in order to allow the Disclosing Party the opportunity to oppose the order, notice, or process, or seek a protective order. If requested by the Disclosing Party, the Receiving Party shall cooperate fully with Disclosing Party in contesting such disclosure. Except as such demand shall have been timely limited, quashed or extended, the Receiving Party may thereafter comply with such demand, but only to the extent required by law. Where the Disclosing Party obtains a protective order, nothing in this PPA shall be construed to authorize the Receiving Party to use in any manner or disclose the Disclosing Party's Confidential Information to parties other than such governmental or judicial agency or body or beyond the scope of the protective order.

(b) The obligations of the Parties under this Article will survive for a period of two (2) years from and after the expiration or earlier termination of this PPA.

13.2 Press Releases. Without limiting the foregoing, Customer acknowledges and agrees that (a) it shall not issue any statement or press release without the prior written consent of Seller, (b) Seller has the exclusive right to (i) claim that electric energy provided to Customer was generated by the System and (ii) claim responsibility for all reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy, and (c) Seller is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

ARTICLE XIV NOTICES

14.1 Notices. All notices, requests, statements or payments ("Notices") will be made to the addresses and persons specified below. All Notices will be made in writing except where this PPA expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery or overnight delivery). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery or overnight delivery. When Notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

Customer: County of Albany
[Insert Customer street]
[Insert Customer city, state,zip]
Attn: [Insert Customer Contact Person]
[Insert Contact Person Title or Dept]
E-mail:[Insert Customer contact e-mail address]

Seller: Calibrant NY II, LLC
311 N. Bayshore Drive
Safety Harbor, FL 34695
Attn: General Counsel

E-mail:legal@calibrantenergy.com

ARTICLE XV ASSIGNMENT; BINDING EFFECT

15.1 Assignment; Binding Effect. The Parties shall not, without the prior written consent of the other, assign, pledge or transfer all or any part of, or any right or obligation under, this PPA, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void. Notwithstanding the foregoing, (a) changes in control of Seller shall not be deemed an assignment of this PPA, and (b) Seller may, one or more times and without the consent of Customer, mortgage, pledge or otherwise directly or indirectly transfer its rights and interests in this PPA to (i) any Finance Party, (ii) any entity through which Seller is obtaining financing from a Finance Party, (iii) any Affiliate of Seller or (iv) any Person succeeding to all or substantially all of the assets of Seller, provided in each case that the assignee assumes Seller's obligations under this PPA in a binding written instrument.

15.2 Cooperation with Financing. Customer agrees that it shall cooperate with Seller and its Finance Parties in connection with any financing of the System or portfolio

of energy generation, storage and/or management facilities of which the System is part, including by (a) providing a written consent to assignment on customary terms (which may include notice, cure and step-in rights), and (b) furnishing such information, giving such certificates (including, but not limited to, an officer's certificate in the form attached hereto as Exhibit D), and providing such opinions of counsel and other items, as Seller or its Finance Parties may reasonably request.

15.3 Assignment of Warranties or Supply Contracts. In the event Customer exercises the Purchase Option pursuant to Article XII, Seller shall assign to Customer any then-existing warranties, and, at Customer's request, any equipment, maintenance, operations or supply contracts pertaining to the System or its operation.

ARTICLE XVI MISCELLANEOUS

16.1 Governing Law/Venue/Jury Waiver. This PPA will be governed by the laws of the State of New York without giving effect to principles of conflicts of laws. Venue for any litigation arising from this PPA shall only be proper in the state and federal courts of New York, New York. TO THE EXTENT PERMISSIBLE BY LAW, THE PARTIES HEREBY EACH WAIVE THEIR RIGHT TO TRIAL BY JURY FOR ANY LITIGATION ARISING FROM THIS PPA.

16.2 Entire Agreement; Amendments. This PPA (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Any amendment, modification or change to this PPA will be void unless in writing and signed by both Parties.

16.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.

16.4 Severability. If any part, term, or provision of this PPA is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this PPA will remain in full force.

16.5 No Third Party Beneficiaries. Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

16.6 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

16.7 Relationships of Parties. This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

16.8 Attorneys' Fees. If any action, arbitration, judicial reference or other proceeding is instituted between the parties in connection with this PPA, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein. The prevailing party shall be determined by the trial of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues.

16.9 Counterparts. This PPA may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

16.10 Further Assurances. The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

16.11 Construction of Agreement. This PPA and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against all parties to this PPA and shall further be construed and interpreted without reference to the identity of the party or parties preparing this document, it being expressly understood and agreed that the parties hereto participated equally in the negotiation and preparation of this PPA or have had equal opportunity to do so. Accordingly, the parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the party who caused the uncertainty to exist. The captions used herein are for convenience only and are not a part of this PPA and do not in any way limit or amplify the terms and provisions hereof.

16.12 Exhibits and Schedules. Any and all exhibits and schedules referenced herein and/or attached hereto are hereby incorporated into this PPA by reference.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this PPA as of this [Day
#+nd, rd or th] day of [Month], 2023.

CUSTOMER

County of Albany

By: _____
Its: _____

SELLER

Calibrant NY II, LLC

By: _____
Its: _____

By: _____
Its: _____

SCHEDULE 1 TO SOLAR ENERGY POWER PURCHASE AGREEMENT

SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. **Definitions.** The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

"**Affiliate**" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

"**Agreement**" or "**PPA**" shall have the meaning set forth in the Preamble to this PPA.

"**Applicable Law**" means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, binding guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

"**Authorized Users**" means (i) Customer's employees and (ii) Authorized Agents, provided the Authorized Agents comply with the terms of this Agreement.

"**Authorized Agents**" means Customer's consultants, agents and contractors who are working on and at the Premises and who require access to the System solely for their support of Customer's internal business.

"**Bankrupt**" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Bankruptcy Code" means the United States Bankruptcy Code.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

"Capacity Rights" means rights to capacity associated with the electric generating capability of the System.

"Change in Law" means (i) the enactment, adoption, promulgation, modification, or repeal after the Effective Date of any Applicable Law, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date, 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 Seller's ownership of, and supply, construction, installing, operating or maintaining the System, or other performance of Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

"Claiming Party" has the meaning ascribed to such term in Section 8.3.

"Commercial Operation" means that the System is ready for regular, daily operation, has been connected to the Premises electrical system, and is capable of producing Energy Output.

"Commercial Operation Date" means the first day on which the System is ready for Commercial Operation as certified in writing by Seller to Customer substantially in the form of Exhibit E.

"Confidential Information" means any non-public confidential or proprietary information of a Party or its Affiliates or any of its or their Representatives relating to this PPA and the System and revealed to the other Party or its Affiliates or any of its or their Representatives during the Term.

"Contract Year" means the consecutive 12 months period commencing on the Commercial Operation Date.

"Costs" means any fees, expenses and/or obligations incurred by either Party in connection with this PPA or breach thereof by the other Party.

"Curtailed Energy Output" shall have the meaning as defined in Section 3.4

"Customer" shall have the meaning set forth in the Preamble to this PPA.

"Default Termination Value" means the applicable value set forth in Schedule 2.

"Defaulting Party" shall have the meaning ascribed to such term in Section 9.1.

"Delivery Point" means the point where the Energy Output is delivered under this PPA, which shall be the point where the Energy Output meets the Utility Metering Device and the Project Metering Device.

"Early Termination Date" shall have the meaning ascribed to such term in Section 9.2.

"Effective Date" shall have the meaning set forth in the Preamble to this PPA.

"Energy" means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt hours.

"Energy Deficiency Quantity" shall have the meaning ascribed to such term in Section 7.3(b)(v).

"Energy Output" means the amount of Energy generated by the System and delivered to Customer at the Delivery Point, as metered in whole kilowatt-hours (kWh) by the Project Metering Device. The Energy Output delivered to Customer at the Delivery Point shall be deemed to be equal to the energy measured at the Project Metering Device.

"Energy Payment Rate" shall have the meaning ascribed to such term in Section 3.2.

"Energy Surplus Quantity" shall have the meaning ascribed to such term in Section 7.3(b)(v).

"Environmental Attributes" means any and all currently existing and future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to solar renewable energy credits, or SRECs, and all other similar items, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) nitrous oxide, hydrofluoro carbons, perfluoro carbons, 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; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser 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 at the Green Tag Purchaser's discretion, and include without limitation those 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.

"EULA" shall have the meaning ascribed to such term in Section 6.5(c).

"Event of Default" shall have the meaning ascribed to such term in Section 9.1

"Exercise Notice" shall have the meaning ascribed to such term in Section 12.1.

"Exercise Period" shall have the meaning ascribed to such term in Section 12.1.

"Extension Term" shall have the meaning ascribed to such term in Section 2.1.

"Federal Energy Regulatory Commission" shall mean the United States Federal Energy Regulatory Commission, or any successor agency.

"Final Determination" shall have the meaning ascribed to such term in Section 12.4.

"Finance Party" means any Person providing debt, equity or tax equity financing or refinancing or credit support in connection with the development, installation, construction, ownership or operation of the System or a portfolio of energy generation, storage and/or management systems of which the System is part.

"Force Majeure" means any event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the reasonable control, or the result of the negligence, of the Claiming Party, and (ii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, including acts of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military action; terrorism; economic sanction or embargo; civil strike; work stoppage, slow-down, or lockout; explosion; fire; earthquake; abnormal weather condition or actions of the elements; pandemic or epidemic; the binding order of any governmental authority; the failure to act on the part of any governmental authority other than the ability to obtain permits required for the performance of a Party hereunder (provided such action has been timely requested and diligently pursued); outages required by or caused by any utility, or the unavailability of electric service to the Premises. Force Majeure will not be based on (i) Customer's inability economically to use Energy purchased hereunder, or (ii) Seller's ability to sell Energy at a price greater than the price of Energy under this PPA. Economic hardship of either Party shall not constitute Force Majeure.

"Governmental Charges" means all applicable federal, state and local taxes, payments in lieu of taxes (other than taxes based on income or net worth), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a governmental authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this PPA.

"Hazardous Materials" means any chemical, waste, or other substance (a) that now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "solid waste," "toxic substances," "toxic pollutants," "pollution," "pollutants," "contaminants," "regulated substances," or words of similar import under any environmental law, (b) that 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, (e) for which liability or standards of conduct may be imposed by any governmental authority, or (f) petroleum or any fraction thereof, petroleum products, natural gas, natural gas liquids, asbestos or asbestos-containing materials, radon, toxic mold, per- or polyfluoroalkyl substances, or polychlorinated biphenyls.

"Indemnitee" has the meaning ascribed to such term in Section 11.1.

"Indemnitor" has the meaning ascribed to such term in Section 11.1.

"Indemnity Claims" means all losses, liabilities, damages, costs, reasonable out of pocket expenses and attorneys' fees, whether incurred by settlement or otherwise.

"Intellectual Property" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

"Independent Appraiser" means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an, employee of, or directly or indirectly retained as consultant or adviser to, Seller or any Affiliate of Seller or Customer.

"Initial Term" has the meaning ascribed to such term in Section 2.1.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Late Payment Interest Rate" means, for any date, the lesser of (i) eight percent (8%) per annum and (ii) the maximum rate permitted by Applicable Law.

"Local Distribution Company" means National Grid, the owner of the local electric distribution system that serves the Premises.

"Non-Defaulting Party" shall have the meaning ascribed to such term in Section 9.2.

"Notices" shall have the meaning ascribed to such term in Section 14.1.

“Notice of Commercial Operation” means the document, in substantially the same form as in Exhibit E, submitted by Seller and acknowledged by the Customer establishing the Commercial Operation Date.

“Party” or “Parties” shall have the meaning set forth in the Preamble to this PPA.

“Performance Assurance” means collateral in form and substance reasonably acceptable to the requesting Party, including but not limited to cash, letter of credit from a financial institution acceptable to Seller, or other security.

“Person” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

“Preliminary Determination” shall have the meaning ascribed to such term in Section 12.4.

“Premises” shall have the meaning set forth in the first WHEREAS clause of this PPA.

“Project Metering Device” means any and all meters that are part of the System and located immediately before the Delivery Point on the Seller’s side of the Utility Metering Device needed for the registration, recording and transmission of information regarding the Energy Output.

“Prudent Industry Practices” means, with respect to any of Seller’s obligations hereunder and any of the services being provided by Seller or its Affiliate, or any other contractor or subcontractor pursuant to this PPA, those practices, acts, methods, techniques, equipment (including the manufacturers’ design, engineering, construction, testing, operation, and maintenance guidelines applicable to any equipment in question), specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly accepted with respect to solar photovoltaic energy systems of a type and size similar to the System in the same geographic region as the System that, at a particular time, in the exercise of reasonable judgment in the light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturers’ recommendations, reliability, safety, environmental protection, economy, and expedition.

“Purchase Option” has the meaning ascribed to such term in Section 12.1.

“Purchase Price” means the amount to be paid by the Customer in accordance with the provisions of Article XII.

“Remediation” means the testing and abating, encapsulating, removing, remedying or neutralizing of Hazardous Materials and any other corrective action required to address and fully resolve the presence or release of Hazardous Materials in accordance with Applicable

Law.

"Representatives" shall have the meaning ascribed to such term in Section 13.1(a).

"Schedule of Definitions and Rules of Interpretation" shall have the meaning ascribed to such term in Section 1.1.

"Seller" shall have the meaning set forth in the Preamble to this PPA.

"Site Lease" means the Site Lease Agreement dated concurrently herewith by and between the Parties.

"Software Products" means any software that is owned or licensed by the Seller or its affiliates and that is either separately deliverable for use in the System, or for use in a computer system owned by the Customer for use with the System, or delivered as firmware embedded in the System.

"Station Power" means electric energy consumed in the start-up and operation of the System, which is distinct from the alternating current output of the System.

"System" means the solar electric generating facility that produces the Energy Output sold and purchased under this PPA. The System is more particular described in Exhibit B.

"System Assets" means each and all of the assets of which the System is comprised, including Seller's solar energy panels, mounting systems, inverters, integrators and other related equipment installed on the Premises, electric lines required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets including software that is delivered at the Premises for monitoring and/or controlling the System and software needed for remote access, support or data acquisition, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System including the Site Lease.

"System Loss" means loss, theft, damage or destruction of the System or System Assets, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Seller's negligence or intentional misconduct, (ii) Seller's breach of maintenance obligations under the PPA, or (iii) normal wear and tear of the System.

"System Software" means the Software Products included in the System Assets.

"Term" means the Initial Term and any Extension Term.

"Test Energy" shall have the meaning ascribed to such term in Section 3.3.

"Transaction" means any transaction between the Parties under the terms of the PPA or the Site Lease or any other agreements, instruments, or undertakings between the Parties.

"Transfer Date" shall have the meaning ascribed to such term in Section 12.1.

"USD" means United States Dollars.

"Utility Metering Device" means any and all meters that are owned by the Local Distribution Company and are associated with an electric service account with the Local Distribution Company in the name of Customer.

2. Rules of Interpretation. In this PPA, unless expressly provided otherwise:

- (a) the words "herein," "hereunder" and "hereof" refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;
- (b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto, and references to this PPA;
- (c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- (d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;
- (e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- (f) the singular includes the plural and vice versa;
- (g) a reference to a Person (including any Party) includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- (h) words of any gender shall include the corresponding words of the other gender;
- (i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- (j) references to "or" shall be deemed to be disjunctive but not necessarily

exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

- (k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- (l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- (m) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- (n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;
- (o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- (p) a reference to time is a reference to the time in effect in New York, New York on the relevant date;
- (q) if a payment prescribed under this PPA to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day; and
- (r) if any index used in this PPA at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Seller and Customer shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this PPA.

SCHEDULE 2 TO SOLAR ENERGY POWER PURCHASE AGREEMENT

Default termination value per 9.4(a)

EXHIBIT A TO SOLAR ENERGY POWER PURCHASE AGREEMENT

Site Lease Agreement

Attached hereto and made a part hereof is the Site Lease Agreement dated the [Day #+st, nd, rd or th] day of [Month], 2023.

EXHIBIT B TO SOLAR ENERGY POWER PURCHASE AGREEMENT

System

The System will consist approximately of the following components to be installed on the Premises:

1. An approximately 2.06MWdc ground mounted solar array installed roughly in accordance with the array layout below.
2. Approximately 3400 PV modules, each having a rating of 580 Wp.
3. Fixed racking system at a 25 degree tilt.
4. System to be interconnected to National Grid distribution feeder serving site.
5. A Data Acquisition System to provide remote performance monitoring
6. The facility will be fenced to prevent access.

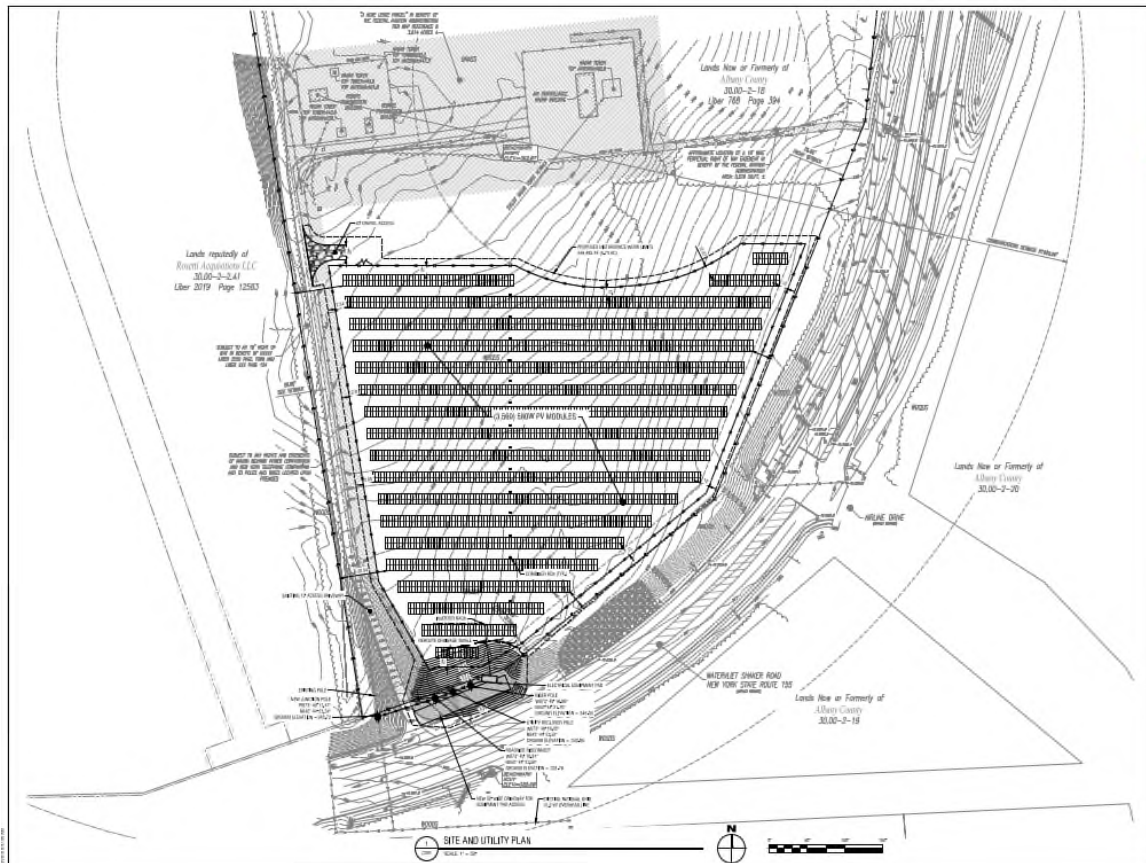


EXHIBIT C TO SOLAR ENERGY POWER PURCHASE AGREEMENT

Energy Payment Rate

PPA Cents per kWh Rate:

\$0.1295_____/kWh

Rate Escalation:

2.5% per annum

EXHIBIT D TO SOLAR ENERGY POWER PURCHASE AGREEMENT

Form of Officer's Certificate

THIS CERTIFICATE is delivered in regards to the Energy Power Purchase Agreement dated _____, 20__ (the "PPA") and the Site Lease Agreement dated _____, 2023 (the "Site Lease") between Calibrant NY II, LLC (the "Seller/Lessee"), and County of Albany (the "Customer/Lessor"). Capitalized terms used herein without definition shall have the meanings given to them in the Agreement.

The undersigned being the duly appointed and acting [Insert title of officer], of DOES HEREBY CERTIFY in the name and on behalf of the Customer/Lessor that (s)he is authorized to execute and deliver this certificate and that:

A. The persons whose names are set forth below are duly elected, qualified and an acting authorized signatories of the Customer/Lessor, holding on the date hereof the office set forth opposite their respective names and the signature appearing opposite their respective signatures are their true and genuine signatures, and they are authorized by all requisite corporate action, including standing resolutions and/or other internal approval processes, to execute and deliver the PPA and Site Lease Agreement and other documents required of the Customer/Lessor in connection with the execution, delivery and performance of the PPA and Site Lease Agreement and the consummation of the transaction contemplated thereby.

<u>Name</u>	<u>Office(s)</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____

B. Attached hereto is a true and correct copy of the Articles of Incorporation for County of Albany, a _____ Corporation.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate this ____ day of _____, 20__.

Name:
Title:

(CORPORATE SEAL)

EXHIBIT E TO SOLAR ENERGY POWER PURCHASE AGREEMENT

Form of Notice of Commercial Operation

Notice of Commercial Operation

POWER PURCHASE AGREEMENT between Customer and Calibrant TBD, LLC:	[INSERT PPA DATE]
CUSTOMER :	County of Albany
COMMERCIAL OPERATION DATE :	[mm/dd/yyyy]
PROJECT NUMBER :	Albany Radar Tower

1. Unless defined herein, all terms shall have the same meaning as they have been defined in the above captioned Power Purchase Agreement.
2. In accordance with the terms of the above captioned Power Purchase Agreement, Calibrant NY II, LLC hereby submits this Notice of Commercial Operation certifying that the System is ready for regular, daily operation, has been connected to the Premise's electrical system, and is capable of producing the Energy Output as of the above referenced Commercial Operation Date.

Submitted For Calibrant NY II, LLC Signature: _____ Date: _____

Print Name and Title: _____

3. Customer hereby acknowledges the receipt of the Notice of Commercial Operation.

Acknowledged and Received for Customer:

Signature: _____ Date: _____

Print Name and Title: _____