

NEW APPLICATION



0000112450

ORIGINAL

1 Court S. Rich AZ Bar No. 021290  
2 M. Ryan Hurley AZ Bar No. 024620  
3 **Rose Law Group pc**  
4 6613 N. Scottsdale Road, Suite 200  
5 Scottsdale, Arizona 85250  
6 Direct: (480) 505-3937  
7 Fax: (480) 505-3925

Arizona Corporation Commission

DOCKETED

MAY 25 2010

DOCKETED BY	MR.
-------------	-----

8 Attorneys for Applicant SolarCity Corporation

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 KRISTIN K. MAYES  
CHAIRMAN

SANDRA D. KENNEDY  
COMMISSIONER

PAUL NEWMAN  
COMMISSIONER

11 GARY PIERCE  
12 COMMISSIONER

BOB STUMP  
COMMISSIONER

13  
14 **IN THE MATTER OF SOLARCITY )**  
15 **CORPORATION REGARDING ITS )**  
16 **REQUEST FOR SPECIAL )**  
17 **CONTRACT APPROVAL FOR )**  
18 **SOLAR SERVICES AGREEMENTS )**

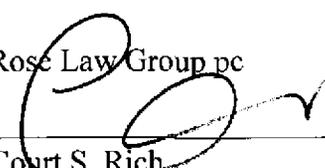
DOCKET NO. E-20690A-10-0214

**APPLICATION OF SOLARCITY FOR  
SPECIAL CONTRACT APPROVAL**

19 Applicant, SolarCity Corporation ("SolarCity"), by and through undersigned counsel  
20 hereby submits its Application for Special Contract Approval seeking expedited review.

21 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of May, 2010.

22  
23  
24 Rose Law Group pc

25   
26 Court S. Rich  
27 M. Ryan Hurley  
28 6613 N. Scottsdale Road, Suite 200  
Scottsdale, Arizona 85250  
Attorneys for Applicant SolarCity Corp.

25 DOCKET CONTROL  
26 ARIZONA CORPORATION COMMISSION  
27 2010 MAY 25 P 3:02

RECEIVED



1 **II. Discussion**

2 SolarCity intends to install and operate solar photovoltaic systems on the premises of the  
3 Schools. The SSAs between the Schools and SolarCity are nearly identical to SolarCity's SSAs  
4 that the Commission previously reviewed in Decision No. 71277 and again in Decision No.  
5 71644. The only changes between the previously reviewed SSAs and the SSAs submitted in this  
6 Application are: 1) customer details; 2) system sizes; 3) installed system cost/value (the fair  
7 value); 4) \$/kWh price; and 5) buyout and termination values. These items are set forth in  
8 **Exhibit B.**

9 Under the attached SSAs, SolarCity will design, install, operate, and maintain the solar  
10 systems on the Schools' premises with no up front cost pursuant to all applicable rules and  
11 regulations including the Commission's Interconnection Document and Arizona Public Service's  
12 Interconnection Standards. This arrangement is a benefit to the schools because they will be  
13 able to adopt solar systems with zero up-front costs while saving significant amounts of money  
14 over time. The SSAs provide each school with a combined locked in rate for all services at  
15 \$0.09 per kWh for the life of the SSAs. The SSAs save Cactus and Scales an estimated  
16 \$1,408,731.00 and \$331,562.00 respectively over 25 years. The Schools' substantial savings  
17 make it clear that approval of the SSA rates is in the best interest of the Schools and the public.  
18 In addition, approval of the SSA rates will result in additional adoption of renewable energy and  
19 will further the Commission's goals under the REST.

20  
21 **III. Time is of the essence**

22 SolarCity submits these SSAs for Special Contract approval because time is of the  
23 essence for each project. SolarCity has secured funding for each project and such funding is  
24 likely to not be available if the Commission declares that SSA providers are Public Service  
25 Corporations as a result of Docket No. E-20690A-09-0346. Delays in approval (e.g. waiting for  
26 the Commission's decision in Track Two of Docket No. E-20690A-09-0346) could translate into  
27 a loss of funding for these projects and therefore, a lost opportunity for the Schools to save  
28 money. In addition, SolarCity has secured reservations with APS for rebates associated with the

1 systems and delays may jeopardize these rebates and thus the economic viability of the projects.  
2 The APS rebate reservations are attached hereto as **Exhibits C-1 and C-2**. Finally, every day  
3 that passes means one less day that these schools can save money in this troublesome economic  
4 time.

5  
6 **IV. Waiver**

7 SolarCity hereby waives the statutory time periods that apply to the Commission's  
8 consideration of this Application under A.R.S. § 40-367 to the extent that such consideration and  
9 decision is rendered at or before the Commission's Open Meeting of July 27, 28, 2010.

10  
11 **V. Conclusion**

12 For these reasons, SolarCity hereby respectfully requests that the Commission  
13 expeditiously approve the rates proposed in the attached SSAs as special contracts pursuant to  
14 Track One of the Commission's order in Docket No. E-20690A-09-0346.

1 **Original and 13 copies filed on**  
2 **this 16th day of May 2010 with:**

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington Street  
6 Phoenix, Arizona 85007

7 I hereby certify that I have this day served the foregoing documents on all parties of record in  
8 this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid  
9 to:

10 Steve Olea  
11 Director, Utilities Division  
12 Arizona Corporation Commission  
13 1200 W. Washington Street  
14 Phoenix, Arizona 85007

15 Lyn Farmer  
16 Chief Administrative Law Judge  
17 Arizona Corporation Commission  
18 1200 W. Washington Street  
19 Phoenix, Arizona 85007-2927

20 Janice Alward  
21 Chief Counsel, Legal Division  
22 Arizona Corporation Commission  
23 1200 W. Washington Street  
24 Phoenix, Arizona 85007

25 Deborah Scott  
26 Pinnacle West Capital Corp Law Dept  
27 400 N. 5th Street  
28 P.O. Box 53999, MS 8695  
Phoenix, Arizona 85072

Dated at Scottsdale, Arizona  
this 16th day of May, 2010

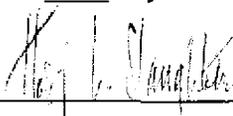


EXHIBIT A-1



**Exhibit 1**  
**Finance Attachment**

1. Term: Fifteen (15) years, beginning on the Commercial Operation Date
2. Additional Terms: Up to Three (3) Additional Terms of Five (5) years each.
3. Environmental Incentives and Environment Attributes. Notwithstanding anything to the contrary in the Solar Services Agreement (including, without limitation, Sections 5, 6(a), and 16(a) of the General Terms and Conditions), the Environmental Incentives and Environmental Attributes (but not the Tax Credits) accrue to Purchaser. Purchaser has, in turn, assigned payment of the Environmental Incentives to Seller.

4. Contract Price:

Contract Year	\$/kWh
1	\$0.0900
2	\$0.0900
3	\$0.0900
4	\$0.0900
5	\$0.0900
6	\$0.0900
7	\$0.0900
8	\$0.0900
9	\$0.0900
10	\$0.0900
11	\$0.0900
12	\$0.0900
13	\$0.0900
14	\$0.0900
15	\$0.0900

Purchaser is not borrowing any funds from Seller to acquire the System (including installation and maintenance), nor is Purchaser obligated to co-sign on any loan related to the System."

5. Condition Satisfaction Date: September 31, 2010
6. Anticipated Commercial Operation Date: December 31, 2010
7. Outside Commercial Operation Date: January 31, 2010
8. Purchase Option Price

End of Contract Year	Option Price*
6	\$317,865.08
10	\$230,153.23
15	\$206,382.49

\* Higher of Fair Market Value of System or amount specified

9. Termination Value:

Contract Year	Termination Value

Contract Year	Termination Value
1	\$700,023.89
2	\$583,406.03
3	\$480,207.85
4	\$394,067.05
5	\$317,017.73
6	\$236,286.76
7	\$204,359.33
8	\$180,924.78
9	\$156,486.76
10	\$130,994.27
11	\$104,393.73
12	\$98,699.43
13	\$92,774.98
14	\$86,608.61
15	\$80,187.94

10. **Rebate Variance.** All prices in this Agreement are calculated based on a rebate of \$0.182/kWh for 10 years. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received, provided, however, that Buyer shall have the right to terminate this Agreement if it does not accept the pro-rata adjustment.

**Exhibit 2**

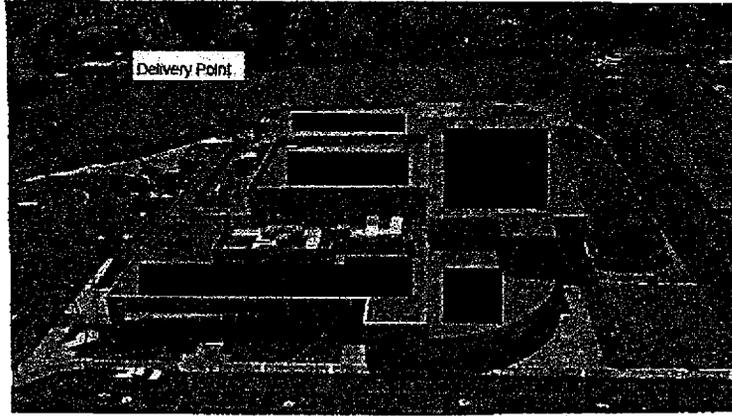
**System Description**

1. **System Location:** Scales Technology School, 1115 West 5<sup>th</sup> Street, Tempe, AZ 85281
2. **System Size (DC kW):** 75 kW DC
3. **Expected First Year Energy Production:** 135,000
4. **Scope:** *Roof mounted system*
5. **Expected Module(s):** Evergreen ES-A-210
6. **Expected Inverter(s):** 3 Satcon Power PVS-75
7. **Expected Structure:** Roof Mount, If a Roof Mount has been indicated, then Seller will be solely responsible for verifying the structural integrity of the roof.
8. **Includes:** trenching, fencing, panels, inverters and balance of system, operations and maintenance, 32" monitor display at area of customers choice.
9. **Excludes:** Internet connection for display provided by customer.

**Exhibit 3**  
**Purchaser's Facility**

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF MARICOPA, WITH A SITUS ADDRESS OF 1115 W 5TH ST, TEMPE AZ 85281-2510 CURRENTLY OWNED BY TEMPE SCHOOL DIST 3 HAVING A TAX ASSESSOR NUMBER OF 124-36-028G AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS TR 31 OF STATE PLAT 9 EX W 562' & EX N 158' PER DKT 7012/266 .

**Exhibit 4**  
**Delivery Point**



**Exhibit 5**  
**License Area**

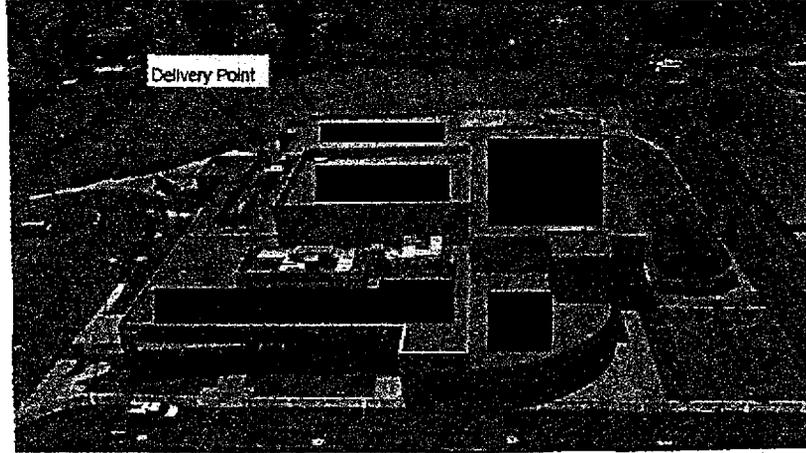


Exhibit 6  
Memorandum of License

RECORDING REQUESTED BY AND WHEN )  
RECORDED RETURN TO: )  
SolarCity Corporation )  
393 Vintage Park Drive, Suite 140 )  
Foster City, CA 94404 )  
Attention: Lease/License Administrator )

(space above this line reserved for recorder's use)

MEMORANDUM OF LICENSE

THIS MEMORANDUM OF LICENSE is made and entered into this 7<sup>th</sup> day of MAY, 2010, by and between Tempe School District #3, whose address is 1115 West 5<sup>th</sup> Street, Tempe, AZ 85281 ("Licensor"), and SOLARCITY CORPORATION, whose address is 393 Vintage Park Drive, Suite 140, Foster City, CA 94404 ("Licensee").

- A. Licensor is the owner of certain real property ("Premises"), located in the County of Maricopa, State of Arizona, described in Exhibit A attached to and incorporated herein by reference.
- B. Licensor and Licensee have entered into a Solar Services Agreement dated on or about the Effective Date (the "Agreement") under which Licensee is leasing a photovoltaic electric generating system (the "System") to Licensor. The Agreement is for a term of Fifteen (15) years, beginning on the Effective Date and ending on the Fifteen (15) year anniversary of the Commercial Operation Date with an option to extend the Agreement for up to Three (3) extended terms of Five (5) years each. Pursuant to the Agreement, Licensor has granted Licensee an irrevocable, non-exclusive license ("License") over the Premises for the purposes and on the terms set forth in the Agreement.

Licensor and Licensee agree as follows:

1. Licensor hereby grants to Licensee the License over the Premises on and subject to the terms and conditions set forth in the Agreement which is incorporated herein by reference.
2. The term of the License begins on the Effective Date and continues until one hundred and twenty (120) days after the termination of the Agreement.
3. This Memorandum of License shall not be deemed to modify, alter or amend in any way the provisions of the License or the Agreement. In the event of any conflict between the terms of the License and/or the Agreement and this Memorandum, the terms of the License and/or the Agreement, as applicable, shall control.

The undersigned have executed this Memorandum of License as of the date first written above.

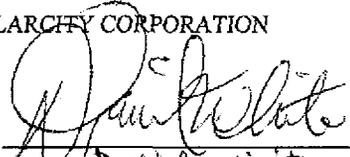
LICENSOR

TEMPE SCHOOL DISTRICT #3

By:   
Name: WILLIAM MUNCH  
Title: GOVERNING BOARD PRESIDENT

LICENSEE

SOLARCITY CORPORATION

By:   
Name: David White  
Title: CEO

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
ACKNOWLEDGEMENT PAGE FOLLOWS]

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On APRIL 21, 2010, before me, LORETTA MEADOR Notary Public, personally appeared WILLIAM MUNCH, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Loretta Meador  
Signature of Notary Public

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN MATEO )

On 7 May 2010, before me, Kari Lynn Leon Notary Public, personally appeared David White, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Kari Lynn Leon  
Signature of Notary Public

## Exhibit 7

### Solar Services Agreement General Terms and Conditions

*Revised November 2, 2009*

**Purpose:** The purpose of this Agreement is to set forth the terms and conditions by which SolarCity will provide the Purchaser with the financing, design, installation, operation and maintenance of a solar panel system at Purchaser's Facility.

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
  
2. **Finance, Design, Development and Operation of Solar Panel System.** Seller shall provide for Buyer the financing, design, development and operation of the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "Term"). At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller as set forth more fully in Section 16 of this Agreement.
  
3. **Term and Termination.**
  - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  
  - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the then current term or Additional Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
  
4. **Billing and Payment.**
  - a. **Monthly Charges.** The Purchaser and Seller agree that Purchaser will take title to all electric energy that the System generates from the moment the System produces such energy and that such energy shall be delivered to Purchaser at the delivery point identified on Exhibit 4 (the "Delivery Point"). Purchaser shall purchase all such electric energy as and when produced by the System. Each month Purchaser shall pay Seller for the benefit it receives under this Agreement. Purchaser agrees that it will make such monthly payments to Seller and that the rate shown in Exhibit 1 (the "Contract Price") is a fair and reasonable price in light of the benefit that the Purchaser receives under this Agreement. The parties agree that the benefit to Purchaser under this Agreement is best measured with relationship to the electricity that the System produces and as such the monthly payment will be

equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electric energy produced by the System as measured by the System meter, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Utility Invoices.** Purchaser shall authorize the Utility to send to Seller duplicates of any bills sent to Purchaser. If Utility does not permit duplicate bills to be sent to Seller, Purchaser shall, promptly upon receipt of each bill, make a photocopy of each bill and mail the copy to Seller. Purchaser shall pay all charges assessed by the Utility to the Facility.
- e. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when the System fails to deliver electric energy to Purchaser for reasons other than Force Majeure. For purposes of this Section 4(c), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges but shall not include any income taxes or similar taxes imposed on net revenues imposed on Seller due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- f. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

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

Unless otherwise specified on Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's benefits under this Agreement do not include the right to the Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include *Environmental Incentives* and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Paragraph 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

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

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

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

6. **Conditions to Obligations.**

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

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

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the “**Premises**”) including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (i) this Agreement and (ii) the Construction Agreement (if any) for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between SolarCity and a subcontractor to install the System.
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility’s electric distribution system.
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

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

- i. Purchaser’s obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit I**).

c. **Failure of Conditions.**

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

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

a. **Permits and Approvals.** Seller, with Purchaser’s reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility’s electric distribution system.

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

- b. **Standard System Repair and Maintenance.** Seller shall finance, design, develop, operate and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to and maintenance of the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Seller is not responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to Exhibit 7. All Contractors and subcontractors other than those that may be scheduled on an appendix to Exhibit 7 shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser Rights and Obligations.**

- a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises as more particularly described in Exhibit 5 (the "License Area") for the purposes of (a) installing,

constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "License Term"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the License Area are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller may record a memorandum of license in substantially the same form attached hereto as Exhibit 6 in the land records respecting the License.

- b. **OSHA Compliance.** Purchaser shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain Purchaser's Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for two (2) full twenty-four (24) hour days (each, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Section 4. Purchaser may purchase electricity from any source during the Term of this Agreement.
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for maintaining the physical security of the License Area and for any damage or vandalism to the System as a result of failure to maintain such security. Purchaser will not conduct activities on, in or about the License Area or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Facility's alarms.

- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels.
- i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to monitor and operate the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4 provided, however, that Purchaser shall have a reasonable period of time to review and contest such estimate.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. **Metering.** Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System.

9. **Change in Law.**

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

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Relocation of System.**

If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide at least sixty (60) but not more than one hundred eighty (180) days prior written notice prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute

facility has inferior Insulation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute Facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. **Removal of System at Expiration.**

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

12. **Intentionally Deleted.**

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

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

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

b. **Remedies.**

- (1) **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages

and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

- (2) Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- (3) Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):
  - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in Exhibit 1 (the "Termination Value") for such Contract Year, (ii) removal costs as provided in Section 13(b)(3)(C) and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in Exhibit 1 is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the Facility for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
  - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b)(3)(C), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

#### 14. Representations and Warranties.

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

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

- (1) **License.** Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.
- (2) **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- (3) **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- (5) **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.

15. **System Damage and Insurance.**

a. **System Damage.**

- (1) **Seller's Obligations.** If the System is damaged or destroyed other than by Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum of the amounts described in Section 13.b(3)A)(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b(3)A)(iii).
- (2) **Purchaser's Obligations.** If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in Exhibit 1 and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall maintain (i) property insurance on the System for the replacement cost thereof, (ii) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (iii) employer's liability insurance with coverage of at least \$1,000,000 and (iv) worker's compensation insurance as required by law.
- ii. **Purchaser's Insurance.** Purchaser shall maintain (i) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least \$1,000,000 and (iii) worker's compensation insurance as required by law.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, terminated or materially altered, (ii) be written on an

occurrence basis, (iii) with respect to the casualty insurance policies, name Seller as loss payee thereunder, (iv) with respect to the liability insurance policies, include the other Party as an additional insured as its interest may appear, (v) include waivers of subrogation, (vi) provide for primary coverage without right of contribution from any insurance of the other Party, and (vii) be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide or otherwise reasonably acceptable to the other party.

- d. **Certificates.** Within thirty (30) days after execution of this Agreement and upon the other Party's request and annually thereafter, each Party shall deliver the other Party certificates of insurance evidencing the above required coverage.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

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

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located and Seller shall file such disclaimer for Purchaser after Purchaser completes the disclaimer. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to (i) with respect to an option exercised at the end of the sixth (6th) or tenth (10th) Contract Years or at the end of the Initial Term, the greater of (A) the amount set forth at such time in the Purchase Option Price schedule in Exhibit 1, and (B) the Fair Market Value of the System, and (ii) with respect to an option exercised at the end of an Additional Term, the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

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

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from

injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the License Area of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any deposit, spill or release of any Hazardous Substance on or about the License Area or the Premises generally.
- i. **"Hazardous Substance"** means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the *lesser* of (A) the total payments made by Purchaser under this Agreement as of the date that the events that first gave rise to such liability occurred; and (B) the total of the prior twelve (12) monthly payments preceding the date that the events that first gave rise to such liability occurred. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. **Force Majeure.**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the

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

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

#### 19. Assignment and Financing

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

20. **Confidentiality and Publicity.**

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

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release regarding or public announcement or the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **General Provisions**

- a. **Choice of Law.** Arizona law shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Phoenix, Arizona. The arbitration shall be administered by the AAA in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance), Section 17 (Indemnification), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(i) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings that is inconsistent with this section of the Code. .
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

*End of Document*

EXHIBIT A-2



Solar Services Agreement (APS)

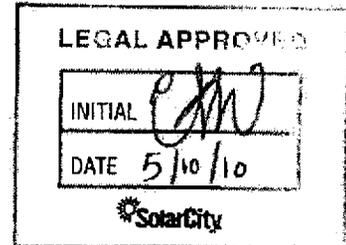
This Solar Services Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Table with 4 columns: Purchaser, Seller, Name and Address, Phone, Fax, E-mail, and Purchaser (check one). It contains contact information for Pinal County School District 4 and SolarCity Corporation.

This Agreement sets forth the terms and conditions of the finance, design installation, operation and maintenance of the turnkey solar panel system described in Exhibit 2 (the "System") to be installed at the Purchaser's facility described in Exhibit 3 (the "Facility").

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

- List of exhibits: Exhibit 1 Finance Attachment, Exhibit 2 System Description, Exhibit 3 Purchaser's Facility, Exhibit 4 Delivery Point, Exhibit 5 License Area, Exhibit 6 Memorandum of License, Exhibit 7 General Terms and Conditions (Revised November 19, 2009)



Purchaser:
Signature: Frank Davidson
Printed Name: Frank Davidson
Title: Superintendent
Date: 5/7/10

SolarCity Corporation
Signature: David White
Printed Name: DAVID WHITE
Title: CFO
Date: 5-10-10

**Exhibit 1**  
**Finance Attachment**

**1. Term:** Fifteen (15) years, beginning on the Commercial Operation Date.

**2. Additional Terms:** Up to Three (3) Additional Terms of Five (5) years each.

**3. Environmental Incentives and Environment Attributes Accrue to** Notwithstanding anything to the contrary in the Solar Services Agreement (including, without limitation, Sections 5, 6(a), and 16(a) of the General Terms and Conditions), the Environmental Incentives and Environmental Attributes (but not the Tax Credits) accrue to Purchaser. Purchaser has, in turn, assigned payment of the Environmental Incentives to Seller.

**4. Contract Price:**

Contract Year	\$/kWh
1	\$0.0900
2	\$0.0900
3	\$0.0900
4	\$0.0900
5	\$0.0900
6	\$0.0900
7	\$0.0900
8	\$0.0900
9	\$0.0900
10	\$0.0900
11	\$0.0900
12	\$0.0900
13	\$0.0900
14	\$0.0900
15	\$0.0900

**5. Condition Satisfaction Date:** September 30, 2010

**6. Anticipated Commercial Operation Date:** October 31, 2010

**7. Outside Commercial Operation Date:** November 30, 2010

**8. Purchase Option Price:**

End of Contract Year	Option Price*
6	\$1,462,179.37
10	\$1,058,704.85
15	\$949,359.45

\* Higher of Fair Market Value of System or amount specified

**9. Termination Value:**

<b>Contract Year</b>	<b>Termination Value</b>
1	\$6,702,719.74
2	\$5,902,076.23
3	\$4,745,983.42
4	\$3,820,692.21
5	\$3,022,519.35
6	\$2,184,987.15
7	\$1,880,348.02
8	\$1,690,643.90
9	\$1,491,995.68
10	\$1,283,953.46
11	\$1,066,044.83
12	\$1,013,273.80
13	\$958,394.58
14	\$901,299.12
15	\$841,873.96

**10. Rebate Variance:** All prices in this Agreement are calculated based on a rebate of \$0.182/kWh for 10 years. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.

**Exhibit 2**

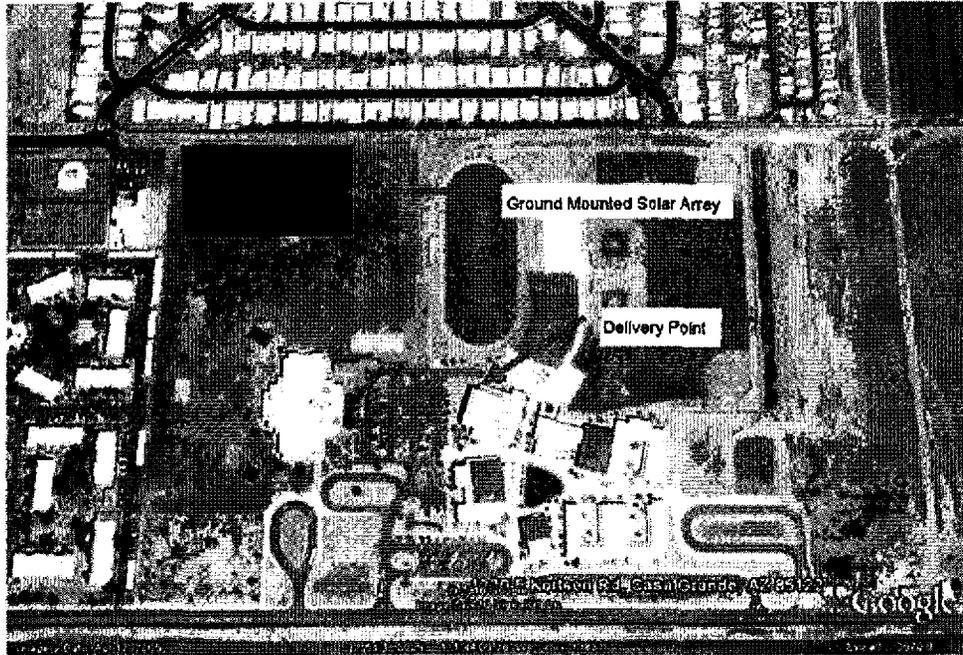
**System Description**

1. **System Location:** Cactus Middle School, 1220 E. Korsten, Casa Grande, AZ 85259
2. **System Size (DC kW):** 345 kW
3. **Expected First Year Energy Production:** 586,500 kWh
4. **Scope:** Ground Mounted System
5. **Expected Module(s):** 4600 First Solar 75 k/Watt panels
6. **Expected Inverter(s):** SatCon Power PVS-100
7. **Expected Structure:** To be determined upon completion of engineering survey site inspection.
8. **Includes:** trenching, fencing, panels, inverters and balance of system, operations and maintenance, 32" monitor display at area of customers choice.
9. **Excludes:** Internet connection for display provided by customer.

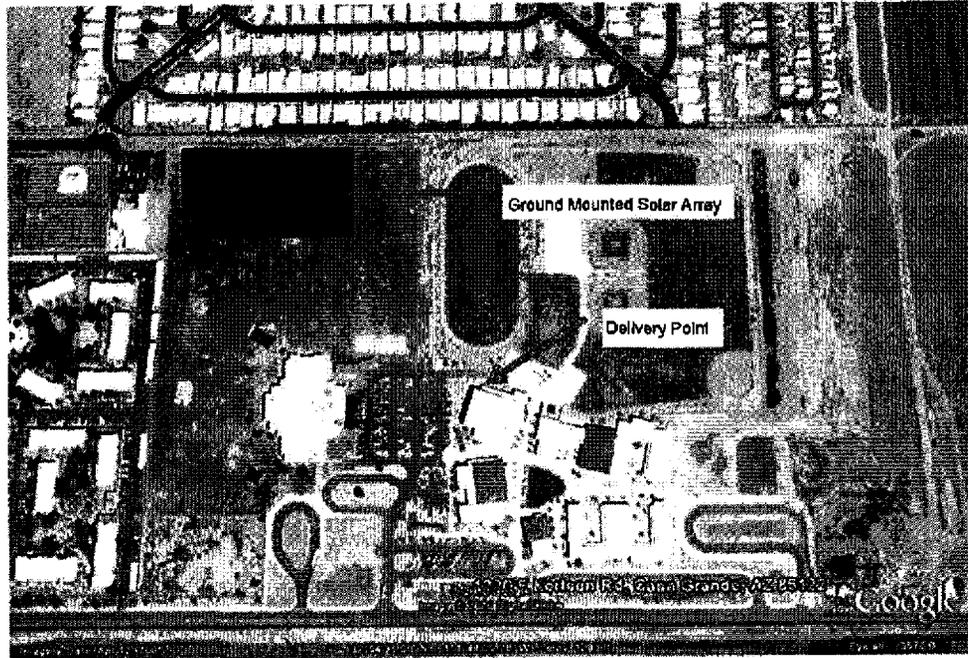
**Exhibit 3**  
**Purchaser's Facility**

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF PINAL, WITH A SITUS ADDRESS OF 1180 E KORTSEN RD, CASA GRANDE AZ 85122-1380 CURRENTLY OWNED BY PINAL COUNTY SCHOOL DIST 4 CASA GRANDE HAVING A TAX ASSESSOR NUMBER OF 506-07-048A AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS S1/2 SW OF SEC 9-6S-6E EXC APPROX W-867' & S-208' OF E-208' & EXCW-10' OF E-40' OF S1/2 SW OF SAID SEC 9 SEC 9-6S-6E 59.61 AC AND DESCRIBED IN DOCUMENT NUMBER 875-933 DATED 07/22/1977 AND RECORDED 07/22/1977.

**Exhibit 4**  
**Delivery Point**



**Exhibit 5**  
**License Area**



**Exhibit 6**  
**Memorandum of License**

**RECORDING REQUESTED BY AND WHEN** )  
**RECORDED RETURN TO:** )  
SolarCity Corporation )  
393 Vintage Park Drive, Suite 140 )  
Foster City, CA 94404 )  
Attention: Lease/License Administrator )

(space above this line reserved for recorder's use)

**MEMORANDUM OF LICENSE**

THIS MEMORANDUM OF LICENSE is made and entered into this 7<sup>th</sup> day of May, 2010, by and between Casa Grande Elementary School District #4 Cactus Middle School, whose address is 1220 E. Korsten, Casa Grande, AZ 85259 ("Licensor"), and SOLARCITY CORPORATION, whose address is 393 Vintage Park Drive, Suite 140, Foster City, CA 94404 ("Licensee").

- A. Licensor is the owner of certain real property ("Premises"), located in the County of Pinal, State of Arizona, described in Exhibit A attached to and incorporated herein by reference.
- B. Licensor and Licensee have entered into a Solar Services Agreement dated on or about the Effective Date (the "Agreement") under which Licensee is leasing a photovoltaic electric generating system (the "System") to Licensor. The Agreement is for a term of Fifteen (15) years, beginning on the Effective Date and ending on the Fifteen (15) year anniversary of the Commercial Operation Date with an option to extend the Agreement for up to Three (3) extended terms of Five (5) years each. Pursuant to the Agreement, Licensor has granted Licensee an irrevocable, non-exclusive license ("License") over the Premises for the purposes and on the terms set forth in the Agreement.

Licensor and Licensee agree as follows:

1. Licensor hereby grants to Licensee the License over the Premises on and subject to the terms and conditions set forth in the Agreement which is incorporated herein by reference.
2. The term of the License begins on the Effective Date and continues until one hundred and twenty (120) days after the termination of the Agreement.
3. This Memorandum of License shall not be deemed to modify, alter or amend in any way the provisions of the License or the Agreement. In the event of any conflict between the terms of the License and/or the Agreement and this Memorandum, the terms of the License and/or the Agreement, as applicable, shall control.

The undersigned have executed this Memorandum of License as of the date first written above.

**LICENSOR**

CASA GRANDE ELEMENTARY SCHOOL  
DISTRICT #4 CHOLA ELEMENTARY

By: Frank Davidson  
Name: Frank Davidson  
Title: Superintendent

**LICENSEE**

SOLARCITY CORPORATION

By: David White  
Name: DAVID WHITE  
Title: CFO

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
ACKNOWLEDGEMENT PAGE FOLLOWS]

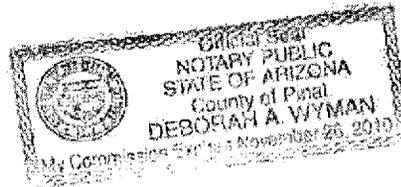
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF Pinal )

On May 7, 2010, before me, Deborah A. Wyman Notary Public, personally appeared Frank Davidson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Deborah A. Wyman  
Signature of Notary Public



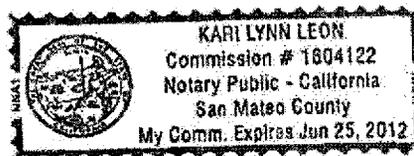
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN MATEO )

On 10 May 2010, before me, Kari Lynn Leon, Notary Public, personally appeared David White, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kari Lynn Leon  
Signature of Notary Public



**Exhibit A**  
**To Memorandum of License**  
**Legal Description of Premises**

That certain real property located in the County of Maricopa, State of Arizona, described as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF PINAL, WITH A SITUS ADDRESS OF 1180 E KORTSEN RD, CASA GRANDE AZ 85122-1380 CURRENTLY OWNED BY PINAL COUNTY SCHOOL DIST 4 CASA GRANDE HAVING A TAX ASSESSOR NUMBER OF 505-07-048A AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS S1/2 SW OF SEC 9-8S-6E EXC APPROX W-667' & S-208' OF E-208' & EXCW-10' OF E-40' OF S1/2 SW OF SAID SEC 9 SEC 9-8S-6E 59.61 AC AND DESCRIBED IN DOCUMENT NUMBER 875-933 DATED 07/22/1977 AND RECORDED 07/22/1977.

## Exhibit 7

### Solar Services Agreement General Terms and Conditions

*Revised November 19, 2009*

**Purpose:** The purpose of this Agreement is to set forth the terms and conditions by which SolarCity will provide the Purchaser with the financing, design, installation, operation and maintenance of a solar panel system at Purchaser's Facility.

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Finance, Design, Development and Operation of Solar Panel System.** Seller shall provide for Buyer the financing, design, development and operation of the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "Term"). At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller as set forth more fully in Section 16 of this Agreement.
3. **Term and Termination.**
  - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the then current term or Additional Term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
4. **Billing and Payment.**
  - a. **Monthly Charges.** The Purchaser and Seller agree that Purchaser will take title to all electric energy that the System generates from the moment the System produces such energy and that such energy shall be delivered to Purchaser at the delivery point identified on Exhibit 4 (the "Delivery Point"). Purchaser shall purchase all such electric energy as and when produced by the System. Each month Purchaser shall pay Seller for the benefit it receives under this Agreement. Purchaser agrees that it will make such monthly payments to Seller and that the rate shown in Exhibit 1 (the "Contract Price") is a fair and reasonable price in light of the benefit that the Purchaser receives under this Agreement. The parties agree that the benefit to Purchaser under this Agreement is best measured with relationship to the electricity that the System produces and as such the monthly payment will be

equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electric energy produced by the System as measured by the System meter, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.
- c. **Utility Invoices.** Purchaser shall authorize the Utility to send to Seller duplicates of any bills sent to Purchaser. If Utility does not permit duplicate bills to be sent to Seller, Purchaser shall, promptly upon receipt of each bill, make a photocopy of each bill and mail the copy to Seller. Purchaser shall pay all charges assessed by the Utility to the Facility.
- e. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when the System fails to deliver electric energy to Purchaser for reasons other than Force Majeure. For purposes of this Section 4(c), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges but shall not include any income taxes or similar taxes imposed on net revenues imposed on Seller due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- f. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

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

Unless otherwise specified on Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's benefits under this Agreement do not include the right to the Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Paragraph 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

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

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

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

**6. Conditions to Obligations.**

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

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

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (i) this Agreement and (ii) the Construction Agreement (if any) for the System by Seller's Financing Parties. "Construction Agreement" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System.
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system.

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

- i. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See Exhibit 1).

**c. Failure of Conditions.**

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

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

**a. Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

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

- b. **Standard System Repair and Maintenance.** Seller shall finance, design, develop, operate and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to and maintenance of the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Seller is not responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.
- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to Exhibit 7. All Contractors and subcontractors other than those that may be scheduled on an appendix to Exhibit 7 shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.
- i. **ARS 15-213.** Seller shall at all times comply with ARS 15-213 and any other applicable laws.

8. **Purchaser Rights and Obligations.**

- a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises as more particularly described in Exhibit 5 (the "License Area") for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "License Term"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the License Area are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller may record a memorandum of license in substantially the same form attached hereto as Exhibit 6 in the land records respecting the License.
- b. **OSHA Compliance.** Purchaser shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for two (2) full twenty-four (24) hour days (each, a "Scheduled Outage") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Section 4. Purchaser may purchase electricity from any source during the Term of this Agreement.
- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for maintaining the physical security of the License Area and for any damage or vandalism to the System as a result of failure to maintain such security. Purchaser will not conduct

activities on, in or about the License Area or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Facility's alarms.

- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing insolation levels.
- i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to monitor and operate the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with **Section 4.**
- j. **Breakdown Notice.** Purchaser shall notify Seller within **twenty-four (24) hours** following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller **immediately** upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- k. **Metering.** Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System.

9. **Change in Law.**

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

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Relocation of System.**

If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide at least sixty (60) but not more than one hundred eighty (180) days prior written notice prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System.

Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insulation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute Facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. **Removal of System at Expiration.**

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

12. **Intentionally Deleted.**

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

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

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

b. **Remedies.**

- (1) **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.
- (2) **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- (3) **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):
  - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in **Exhibit 1** (the "Termination Value") for such Contract Year, (ii) removal costs as provided in **Section 13(b)(3)(C)** and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in **Exhibit 1** is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the Facility for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.
  - C. **Obligations Following Termination.** If a Non-Defaulting Party terminates this Agreement pursuant to this **Section 13(b)(3)(C)**, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

#### 14. **Representations and Warranties**

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

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

- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

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

- (1) License. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.
- (2) Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.
- (3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- (5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

**15. System Damage and Insurance.**

**a. System Damage.**

- (1) Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum of the amounts described in Section 13.b(3)A)(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b(3)A)(iii).
- (2) Purchaser's Obligations. If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Value set forth in Exhibit 1 and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

**b. Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. Seller's Insurance. Seller shall maintain (i) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least \$1,000,000 (iii) worker's compensation insurance as required by law; and (iv) property insurance on the System for the full replacement cost thereof.

- ii. **Purchaser's Insurance.** Purchaser shall maintain (i) comprehensive general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least \$1,000,000 and (iii) worker's compensation insurance as required by law.
- c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, terminated or materially altered, (ii) be written on an occurrence basis, (iii) with respect to the casualty insurance policies, name Seller as loss payee thereunder, (iv) with respect to the liability insurance policies, include the other Party as an additional insured as its interest may appear, (v) include waivers of subrogation, (vi) provide for primary coverage without right of contribution from any insurance of the other Party, and (vii) be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide or otherwise reasonably acceptable to the other party.
- d. **Certificates.** Within thirty (30) days after execution of this Agreement and upon the other Party's request and annually thereafter, each Party shall deliver the other Party certificates of insurance evidencing the above required coverage.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

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

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to (i) with respect to an option exercised at the end of the sixth (6th) or tenth (10th) Contract Years or at the end of the Initial Term, the greater of (A) the amount set forth at such time in the Purchase Option Price schedule in Exhibit 1, and (B) the Fair Market Value of the System, and (ii) with respect to an option exercised at the end of an Additional Term, the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

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

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the License Area of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any deposit, spill or release of any Hazardous Substance on or about the License Area or the Premises generally.
- i. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the lesser of (A) the total payments made by Purchaser under this Agreement as of the date that the events that first gave rise to such liability occurred; and (B) the total of the prior twelve (12) monthly payments preceding the date that the events that first gave rise to such liability occurred. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

**18. Force Majeure.**

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Seller shall not be liable for any damage to the System or the Facility resulting from a Force Majeure event. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event.
- d. If a Force Majeure event continues for a period of one hundred (100) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

**19. Assignment and Financing.**

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

20. **Confidentiality and Publicity.**

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

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release regarding or public announcement or the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **General Provisions**

- a. **Choice of Law.** Arizona law shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Phoenix, Arizona. The arbitration shall be administered by the AAA in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance), Section 17 (Indemnification), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings that is inconsistent with this section of the Code. .
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

*End of Document*

**EXHIBIT B**

<u>School Name</u>	<u>Address</u>	<u>System Size</u>	<u>Installed System Cost/Value</u>	<u>SSA Rate (\$/kWh)</u>	<u>Utility Rebate</u>
Cactus Middle School	1220 E. Korsten, Casa Grande 85259	345 kw (DC)	\$2,242,500 (at \$6.50/Watt)	.09/kWh	.182/kWh (10 years)
Scales Technology Academy	1115 W. 5th St. Tempe 85281	75 kw (DC)	\$487,500 (at \$6.50/Watt)	.09/kWh	.182/kWh (10 years)

<u>Year</u>	<u>Cactus Termination Values</u>	<u>Cactus Buyout Option Amounts</u>	<u>Scales Termination Values</u>	<u>Scales Buyout Option Amounts</u>
1	\$6,702,719.74		\$700,023.89	
2	\$5,902,076.23		\$583,406.03	
3	\$4,745,983.42		\$480,207.85	
4	\$3,820,692.21		\$394,067.05	
5	\$3,022,519.35		\$317,017.73	\$317,865.08
6	\$2,184,987.15	\$1,462,179.37	\$236,286.76	
7	\$1,880,348.02		\$204,359.33	
8	\$1,690,643.90		\$180,924.78	
9	\$1,491,995.68		\$156,486.76	
10	\$1,283,953.46	\$1,058,704.85	\$130,994.27	\$230,153.23
11	\$1,066,044.83		\$104,393.73	
12	\$1,013,273.80		\$98,699.43	
13	\$958,394.58		\$92,774.98	
14	\$901,299.12		\$86,608.61	
15	\$841,873.96	\$949,359.45	\$80,187.94	\$206,382.49

EXHIBIT C-1



**SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT  
GRID-TIED PHOTOVOLTAIC SYSTEM**

THIS SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT ("Contract") between Arizona Public Service Company ("APS"), and Tempe School District #3, ("TSD" or "Participant"), (collectively referred to herein as the "Parties," and each individually referred to herein as a "Party") shall be effective as of \_\_\_\_\_, 201\_\_ (the "Effective Date").

**RECITALS**

**WHEREAS**, APS is a public utility that provides energy to its retail customers in the State of Arizona;

**WHEREAS**, TSD desires to replace some of the energy that it would otherwise purchase from APS with energy generated from a photovoltaic system installed on its property (the "System");

**WHEREAS**, TSD, or its designee, intends to install, maintain and own the System, or otherwise have title to and ownership of the Renewable Energy Credits (as defined herein) associated with the output of the System;

**WHEREAS**, APS is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including a Renewable Energy Standard and Tariff. "Renewable Energy Standard and Tariff or RES" means the Arizona Renewable Energy Standard Rules, A.A.C. R14-2-1801 *et seq.*, as the same may be amended from time to time.

**WHEREAS**, TSD desires to sell and APS desires to purchase certificates representing the Environmental Attributes (as defined herein) associated with the energy produced by the System in order to comply with its obligations under the RES;

**WHEREAS**, this Contract sets forth the terms and conditions for the sale and purchase of such certificates; and

NOW, THEREFORE, in consideration of the above recitals and the mutual agreement of the Parties set forth below, the following terms and conditions shall apply to this Contract:

**TERMS AND CONDITIONS**

**I. Definitions.** The following definitions apply to terms used in this Contract and in the reservation request.

"Aggregate Contract Price" means the lesser of either sixty percent (60%) of the Total Project Cost as provided in the approved reservation application in Exhibit D, or sixty percent (60%) of the Total project Cost as of the Commissioning of the System.

"Arizona Registrar of Contractors" or "ROC" means the Arizona regulatory agency for the licensing and oversight of contractors.

"Authority Having Jurisdiction ("AHJ") means the governmental agency or sub agency which regulates the construction process applicable to the System.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal

place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Commissioning Deadline" means the date that is 365 days following the Reservation Date. The Commissioning Deadline shall be extended on a day-for-day basis as a result of any Force Majeure event, as defined herein, or in accordance with Section 3.

"Commissioning of the System" shall occur only after all conditions precedent to commercial operation of the System have been satisfied, as documented by the certificate attached hereto as Exhibit B.

- (a) TSD, or its designee, shall have obtained and be in compliance with all governmental and regulatory authorizations required for the construction, and operation of the Project, including, but not limited to, any and all permits and/or approvals as required by an AHJ, or if the site is not governed by an AHJ, TSD, or its designee, must provide certification in lieu of AHJ clearance, acceptable to APS in its reasonable discretion;
- (b) The System shall have been installed by a contractor holding an active license appropriate for installation of the System with the Arizona Registrar of Contractors;
- (c) TSD shall have executed an Interconnection Agreement and the System shall meet all applicable interconnection requirements, specifically including, but without limitation, the requirement that the System not be activated or paralleled with the APS distribution system without the express permission from an authorized representative of APS following inspection by APS;
- (d) The System shall meet the Equipment Qualifications identified in Exhibit E attached hereto;
- (e) TSD, or its designee, shall have installed a meter socket(s), pursuant to Section 10 herein;
- (f) TSD, or its designee, shall have installed, at TSD's, or its designee's, expense, the necessary dedicated phone lines in accordance with Section 10 herein; and
- (g) TSD shall be subject to an established rate schedule, either pursuant to an executed Special Contract-Solar or by application of one of APS' pre-established rates.

"Contract Quantity" means the RECs associated with the annual production of the System as specified in Section 6.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in connection with any new arrangements which replace this Contract; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Contract.

"Defaulting Party" has the meaning set forth in Section 25.

"Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Certificates; greenhouse gas or emissions reductions, credits, offset, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or

allocates such characteristics). Such Environmental Attributes shall be expressed in kWh. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes associated with the provision of electricity services.

"Financing Rate" means the interest rate charged to TSD, or its designee, by its lender in connection with the financing of the Project and disclosed to APS pursuant to Section 12 herein. In the event that the TSD, or its designee, does not use third party financing in connection with the Project, the Financing Rate shall mean the internal cost of capital calculated by TSD, or its designee, subject to review and approval by APS in its sole discretion. In no event shall such Financing Rate exceed the Prime Rate as of the Reservation Date plus five percent (5%), regardless of the actual interest rate that may be charged to TSD, or its designee.

"Forecasted Quantity" means an amount of the Product, measured on the basis of a calendar quarter, that is at least seventy-five percent (75%) of the amount of the Product represented on TSD's Initial Production Profile or Annual Production Profile (as set forth in Section 4 and 9), as applicable, for the same quarterly period.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing, Force Majeure shall not be based on (a) TSD's, or its designee's, delay or inability to obtain financing, or other economic hardship of any kind; (b) TSD's, or its designee's, inability to economically use the System; or (c) loss or failure of materials or equipment for the System.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Contract, determined in a commercially reasonable manner.

"Generating Facility" means all or part of the Participant's, or its designee's, electrical generator(s) or inverter(s) together with all protective, safety, and associated equipment necessary to produce electric power at the Participant's, or its designee's, facility.

"Interconnection Agreement" means the agreement, together with appendices, signed between APS and the Participant, covering the terms and conditions governing the interconnection and parallel operation of the Generating Facility with APS.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

"kWh" means kilowatt hour.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Contract, determined in a commercially reasonable manner.

"Major System Components" means PV Panels and Inverter.

"Minimum Contract Quantity" means RECs associated with a minimum production from the System which shall mean, for purposes of this Contract, the production of at least fifty percent (50%) of the Quarterly Contract Quantity in every calendar quarter hereunder, together with the production of at least the Forecasted Quantity in one out of every two consecutive calendar quarters hereunder, subject to adjustment of the Contract Quantity pursuant to Section 6.

"Month" means a calendar Month.

"Non-Defaulting Party" has the meaning set forth in Section 25.

"OEM" means Original Equipment Manufacture.

"Prime Rate" means the lowest rate of interest on bank loans at a given time and place, offered to preferred borrowers as published in the Wall Street Journal on the Reservation Date.

"Project" means the System owned by TSD, or its designee, which is a photovoltaic system utilizing solar energy as the energy source for the solar system.

"Project Site" means TSD property located in Tempe, Arizona.

"Quarterly Contract Quantity" means the Contract Quantity divided equally into four calendar quarters or such other quarterly schedule provided by TSD.

"Renewable Energy" means energy derived from resources that are regenerative or for all practical purposes can not be depleted. Resources that qualify as Renewable Energy, provided that they meet any and all requirements set forth in the RES, include moving water (hydro, tidal and wave power) thermal gradients in ocean water, wind, solar power, geothermal, hydropower, landfill gas, various other forms of biomass, and municipal solid waste.

"Renewable Energy Credit" ("REC") means: (i) the Environmental Attributes associated with the generation of power from a Renewable Energy resource and (ii) the REC reporting rights arising therefrom or connected therewith. One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from one (1) or more Renewable Energy sources, as defined by the RES.

"Replacement Price" means the price (including its transaction costs), determined by APS in a commercially reasonable manner, at which APS purchases (if at all) or installs capacity to generate its own substitute RECs for the deficiency or, absent such a purchase, the market price indexed at the closest geographic location to the System's installation, if any, and if none is established or available, then at a market price determined solely by APS in a commercially reasonable manner.

"Reservation Date" means the date on which TSD has been notified that its reservation has been accepted, which shall trigger the start of the 365-day time period for the Commissioning of the System as evidenced by TSD's executed Reservation application attached hereto as Exhibit D.

"Special Contract – Solar" or "SCS" means the agreement between APS and Participant for electric power supply and consumption, a copy of which is attached as Exhibit F hereto.

"Settlement Amount" means, with respect to a transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a terminated transaction pursuant to Section 25.

"Tax Benefits" means, Renewable Energy related tax credits established under Section 45 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, except for any credits or other tax benefits that are associated with any carbon tax or other assessment (regardless of how any present or future law or regulation attributes or allocates such characteristics).

"Total Project Cost" means the total costs directly associated with the installation of the equipment necessary to produce solar energy to generate electricity to heat and/or cool building interiors, provide hot water and/or provide for other energy needs at Participant's facility. The Total Project Cost may also include costs associated with financing the installation of the System, provided that such costs are disclosed by the Participant, or its designee, and provided further that such costs will be included at a rate not to exceed the Financing Rate. The Total Project Cost shall not include any non-financing expenses incurred after the Commissioning of the System, which shall be defined in this Contract.

"Transmission Owner" means APS, and its successors and assigns, in its capacity as provider of interconnection services under the Interconnection Agreement.

2. **Term of the Contract.** Ten (10) years beginning with the Commissioning of the System ("Term").

3. **Commissioning of the System.** If Commissioning of the System (including all conditions precedent as set forth in Section 1 of this Contract) is not completed by the Commissioning Deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System; provided, however, that the Commissioning Deadline may be extended on a day-for-day basis for up to ninety (90) days if the System is substantially completed and APS approves, in its sole discretion the extension, such approval not to be unreasonably withheld.

As soon as reasonably practicable following the completion of the conditions precedent for Commissioning of the System, TSD, or its designee, must present to APS a certificate in the form attached hereto as Exhibit B (the "Commissioning Certificate"), evidencing that such conditions precedent have been satisfied. Following the receipt of such Commissioning Certificate, APS will conduct an inspection of the System and countersign the Commissioning Certificate confirming that such conditions precedents have been satisfied.

4. **Development Milestones.** Not more than sixty (60) days following the execution of this Contract or one hundred twenty (120) days following the Reservation Date, whichever is longer, TSD, or its designee, shall provide to APS proof of project development, a production profile for the System for each calendar quarter for the Term of the Contract (the "Initial Production Profile"), proof of an executed installation agreement, proof of submission of building and/or construction permits, and must have submitted an application for an Interconnection Agreement. If TSD, or its designee, fails to provide such documentation by the stated deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System. TSD may also terminate this Contract in writing at any time prior to Commissioning of the System; provided, however, that TSD may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated by TSD.

5. **Product.** Renewable Energy Certificates or RECs as defined herein. TSD agrees to transfer to APS any and all RECs purchased by APS pursuant to this Contract for the Term of this Contract. TSD shall complete and deliver to APS a REC Certificate and Bill of Sale/Invoice as described in Section 17 herein.

6. **Contract Quantity.** RECs associated with up to 135,000 kWhs per calendar year for the Term of this Contract. The Parties acknowledge that following the submittal of the proof of project development described in Section 4 above, TSD shall have ten (10) days to amend, in writing, the Contract Quantity herein; provided, however, that such amendment shall not increase the Contract Quantity by more than ten percent (10%), subject to available program funding as determined by APS at its sole discretion, or, in the alternative, the amendment shall not decrease the Contract Quantity by more than twenty percent (20%) (the "Amendment Deadband"). In the event the amendment submitted is outside the Amendment Deadband, the reservation shall be considered rejected as amended and this Contract shall be automatically terminated. TSD may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated in accordance with this provision.

APS shall receive and pay for any and all RECs delivered up to the Contract Quantity. If TSD fails to deliver any RECs associated with energy produced by the System, APS shall be entitled to damages for such RECs not delivered, in accordance with Section 26 herein. In addition, if the System fails to produce the Minimum Contract Quantity, APS shall be entitled, in its sole discretion, to either terminate this Contract or modify the Contract Quantity in accordance with Section 27 herein.

7. **Contract Price.** APS shall pay TSD \$0.182 for each REC associated with a kWh of Renewable Energy actually produced by the System up to the maximum Contract Quantity.

APS shall be obligated to pay TSD, or its payment designee if such designation has been made, the Contract Price until the earlier of: (i) the date that is Ten (10) years after the Commissioning of the System; or (ii) the date on which the aggregate payment by APS to TSD, or such payment designee, under this Contract equals the Aggregate Contract Price.

The Parties expressly acknowledge and agree that the Aggregate Contract Price, which shall be paid by APS over the time period described herein, represents full and total payment for the RECs associated with all energy produced by the System, up to the maximum Contract Quantity, for the Term of this Contract. Accordingly, APS shall retain the sole and exclusive rights to the RECs associated with the Renewable Energy produced by the System, up to the maximum annual Contract Quantity, for the full Term of this Contract and TSD shall provide REC Certificates to APS as described in Section 17, even after full payment has been made by APS in accordance with the preceding paragraph. The purchase of any RECs in excess of the maximum annual Contract Quantity shall be subject to the mutual agreement of the Parties.

8. **TSD's Obligation to Operate.** TSD, or its designee, shall operate and maintain the System in accordance with applicable law, equipment manufacturers' recommendation and widely accepted industry practice, and, without relieving itself of any liability thereunder, maintain such documents and records necessary to confirm TSD's, or its designee's, operation and maintenance of the Project in accordance with such standards. TSD may, in its sole discretion, use third parties, to perform duties associated with this operation and maintenance obligation; provided, however, that TSD shall remain fully and solely liable for the satisfaction of this obligation notwithstanding its use of third parties to perform associated duties.

9. **TSD's Obligation to Provide Annual Production Profile.** Within ten (10) Business Days following the first anniversary of the Commissioning of the System, and during the same period each year thereafter, TSD, or its designee, shall provide to APS a production profile for the System that shows expected production for the current calendar quarter as well as the next three (3) calendar quarters ("Annual Production Profile"). In the event APS does not receive a revised production profile each year thereafter, the most recent production profile received shall be used as the basis for establishing the production profile portion of the Minimum Contract Quantity from that point forward unless or until a new production profile is submitted. In the absence of any production profile, the defined term of the Contract Quantity as shown in Section 6 shall be used.

10. **Metering.** APS shall provide and set an electronic, utility-grade electrical meter ("Inverter-Output Meter") on the System that is compatible with the APS meter reading and billing systems. TSD shall be responsible for all costs associated with the meters and any costs associated with the installation thereto.

TSD shall provide, at TSD's expense, a dedicated phone line to each generator meter and also to the facility service entrance section main billing meter and/or sub meters if necessary as determined by APS. Each dedicated phone line is to be landed on the APS-provided telephone interface module which is typically located within two (2) feet of the meter.

At TSD's expense, TSD shall be responsible for installing the meter socket and all associated equipment, the cost of which shall be borne solely by TSD. The location of the Inverter-Output meter shall be approved by APS and shall be located so that APS has unassisted access to the meter in accordance with APS requirements, including but not limited to Section 300 of the APS ESRM ("Electric Service Requirements Manual") and Service Schedule 1 ("Terms and Conditions for Standard Offer and Direct Access Services").

APS will read the meter remotely for the purpose of providing metered data to TSD, and its designee, in order that TSD, or its designee, may prepare and send an invoice to APS pursuant to Section 11 below. In the alternative, or additionally, APS may read the meter at the Project Site.

11. **REC Certificate Delivery, Billing and Payment.** The calendar quarter shall be the standard period for all payments under this Contract. Within fourteen (14) days after the end of each calendar quarter, or as soon thereafter as reasonably practicable under the circumstances, APS shall provide the metered data to TSD for the preceding calendar quarter, based on its Monthly read of TSD's meter, which shall be done at the same time TSD's standard electricity meter is read. TSD, or its designee, shall use such metered data to complete its invoice (using the form referenced in Section 17 and attached as Exhibit A) for the payment obligations, if any, incurred hereunder during the preceding quarter based on the Monthly meter readings provided by APS. Within five (5) Business Days after its receipt of such information from APS, TSD, or its designee, shall issue the invoice to APS. APS shall begin making payments based on such invoices after it has approved the Total Project Costs submitted by TSD, or its designee, subject to the limitations set forth in Section 12 herein. APS shall make any required payment no later than thirty (30) days following its receipt of a quarterly invoice from TSD, or its designee. TSD expressly agrees that any payment for the Product to which it is entitled hereunder is hereby assigned to SolarCity Corporation. APS shall make all payments under this Contract to an Automatic Clearinghouse Credit (ACH) account designated by TSD which may be in the name of SolarCity Corporation in accordance with the foregoing assignment. If TSD's, or its designee's, invoice is received more than twenty (20) days after the end of the calendar quarter, payment may be delayed an additional thirty (30) days. If an invoice is not received by APS within six (6) Months after the close of the calendar quarter, the right to receive payment for such quarter is waived.

**12. Documentation of Total Project Cost.** Within ninety (90) days after Commissioning of the System, TSD, or its designee, shall provide APS with the Total Project Cost, together with any and all supporting documentation. APS shall have the right to request any additional financial documents that it deems necessary for the purpose of auditing and determining the validity of the Total Project Cost including, but not limited to, original invoices of each item included in the Total Project Costs. The invoice must show proof of payment and provide sufficient detail to identify the material or installation cost. TSD, or its designee, shall provide any and all documentation requested by APS in connection with such audit. Costs that may be included by TSD, or its designee, in the Total Project Costs are set forth in Exhibit C hereto. All costs listed in Exhibit C are subject to all limitations set forth in this Contract. APS shall have the right to dispute the Total Project Cost, and shall not be required to pay any portion of the Contract Price in excess of sixty percent (60%) of the undisputed Total Project Cost until it approves a Total Project Cost, which approval shall not be unreasonably withheld, or until a Total Project Cost is determined by arbitration as set forth herein. In such cases, once a Total Project Cost is determined and approved by APS, APS shall pay any additional portion of the Contract Price not already paid with the total payment by APS not to exceed sixty percent (60%) of the Total Project Cost.

**13. Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Contract, or adjust any invoice for any arithmetic or computational error, within twelve (12) Months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments upon request, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 13 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a transaction occurred, the right to payment for such performance is waived.

**14. TSD's Representations and Warranties.** TSD represents that each REC: (i) represents all of the Environmental Attributes associated with one (1) kWh of energy from the System; (ii) is associated with the generation of Renewable Energy and represents title to and claim over all Environmental Attributes associated with the specified kWh; and (iii) meets all requirements of the Arizona RES, as of the Effective Date of this Contract.

TSD warrants that the RECs have not otherwise been, nor will they be sold, retired, claimed or represented as part of Renewable Energy output or sales, or used to satisfy obligations, in any other jurisdiction or for any other emissions compliance program requiring solar generation, and with the U.S. Attorney General, Federal Trade Commission and other entities providing guidelines on the advertisement of REC ownership claims.

TSD represents and warrants it has and will have at the time of sale, title and ownership to the RECs sold hereunder as evidenced by documentation of the same that is acceptable to APS in its sole discretion.

TSD represents and warrants that the RECs sold hereunder are delivered free and clear of all liens, encumbrances, and claims or any interest therein or thereto by any person arising prior to delivery to APS.

15. **Mutual Representations and Warranties.** Throughout the Term of this Contract, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Contract; (iii) the execution, delivery and performance of this Contract is 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; (iv) this Contract and each other document executed and delivered in accordance with this Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like; (v) it is acting for its own account, has made its own independent decision to enter into this Contract and as to whether this Contract is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract; (vi) it has entered into this Contract in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all RECs referred to in the Contract to which it is a party; and (vii) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

16. **Confidentiality.** No receiving Party shall itself, or permit its employees, consultants and/or agents to, disclose to any person, corporation or other entity any non-public, confidential or proprietary information which the Parties require to keep confidential ("Confidential Information") without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents and consultants and others who have a need for such Confidential Information and have agreed to keep such information confidential. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Contract. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

As used herein, Confidential Information shall not include any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Contract); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protects the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Contract.

The Parties acknowledge, however, that APS may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its regulatory requirements. In the event that APS intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Arizona Corporation Commission ("ACC"), the Residential Utility Consumer Office ("RUCO"), the Federal Energy Regulatory Commission ("FERC") or any employee, staff member, consultant, and/or agent of the foregoing, it shall give a minimum of ten (10) Business Days prior written notice of its intention so that TSD may seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained, TSD waives compliance with the terms hereof with

respect to such Confidential Information to the minimum extent necessary to comply with and solely for the purpose of such regulatory disclosure. Any information so submitted shall be identified as Confidential. Nothing herein shall be deemed to permit TSD to disclose Confidential Information to the foregoing regulatory agencies, or any other party, unless such disclosure is otherwise permitted under this Confidentiality provision.

In addition, TSD specifically agrees to use the following APS approved language in connection with this transaction in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service.

*“The installation was facilitated, in part, by the APS Renewable Energy Incentive Program. This Program offers financial incentives to customers who add Renewable Energy systems to their homes or business. The Program is funded by APS customers and approved by the Arizona Corporation Commission.”*

Any other language used in connection with such public communications that specifically relates to the APS Renewable Energy Incentive Program or this Contract must be approved in advance by APS. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate that, in such event, they will enter into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Confidentiality provision shall be binding with respect to such disclosure. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Section, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Section, whether a claim is based in contract, tort, or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree, or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. In no event shall a Party's directors, management, employees, agents, or consultants be individually liable for any damages resulting from the disclosure of any Confidential Information in violation of the provisions of this Section.

The Parties expressly acknowledge and agree that no third party, including any developer or installer of the System is expressly bound by the provisions of this Section 16, and TSD understands that in order to maintain the confidential nature of any of its Confidential Information with respect to such third party, it should enter into a separate confidentiality agreement with any such third party.

**17. Administration of Contract.** Each Party hereby designates the employee identified below as its administrator for purposes of this Contract. Each Party may change its designated administrator(s) by giving not less than two (2) days prior written notice of its new administrator to the other Party.

**TSD Administrator:**

Contact Name: Steve Pomroy  
Telephone No.: (480)-642-1542, Ext. 7602  
Fax No: (480) 784-1278

**APS Reservation Coordinator**

Contact Name: Reservation Coordinator  
Telephone No.: (602) 328-1924  
Fax No.: (602) 328-1991

**Invoices:**

Attention: APS Energy Settlements  
Telephone No.: (602) 250-3150  
Fax No.: (602) 250-2325

In consideration of APS' purchase of the Product herein, TSD Administrator shall provide the APS Energy Settlements with a REC Certificate and Bill of Sale/Invoice, in the form attached hereto as Exhibit A ("REC Certificate"), which shall serve as a quarterly invoice referenced in Section 11 herein. TSD shall provide the REC Certificate on a quarterly basis, in accordance with Sections 7 and 11 herein, for the full Term of this Contract.

18. **Notices.** All notices or other communications given, delivered or made under this Contract by either Party to the other Party will be in writing and may be delivered personally, by first class mail, overnight delivery service or by facsimile. All notices shall be delivered or sent to the other Party at the address shown below or to any other address as the Party may designate by two (2) days prior written notice given in accordance with this paragraph.

**If to TSD:**

**Company:**  
**Address:**

**Contact**  
**Telephone No.:**  
**Fax No:**

*With a copy to:*  
**Telephone No.:**  
**Fax No:**

**If to APS:**

**Company:** Arizona Public Service Company  
**Address:** P.O. Box 53933  
Phoenix, AZ 85072-3933

**Contact:** APS Renewable Energy  
Mail Station 9649

**Telephone No.:** (602) 250-2547  
**Fax No.** (602) 250-3546

***With a copy to:***

**Attention:** Renewable Program Manager  
Mail Station 9649

19. **Independent Contractor.** The Parties agree that they are independent contractors for the purpose and activities undertaken in accordance with or as contemplated in this Contract, and that no Party will be considered or permitted to be an agent, servant, or partner of, nor in joint venture with, any other Party. It is expressly understood and agreed that neither Party has any right or authority to directly or indirectly incur any obligation or responsibilities on behalf of the other Party or commit the other Party to any matter or understanding or make any warranties or representations with respect to the Project, without the other Party's prior written consent. Each Party waives any and all rights that it may otherwise have under applicable laws or legal precedents to make any claims or take any action against the other Party or any of its related parties in respect of this Contract based on any theory of agency or fiduciary duty. The Parties agree that this Contract is intended solely for the benefit of the Parties hereto, and that nothing in this Contract shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Contract.

20. **Limitation of Remedies, Liability and Damages.** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES

ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

21. **Alternative Dispute Resolution.** All disputes arising under this Contract are subject to the provisions of this Section 21.

- (a) **Mediation.** Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within thirty (30) calendar days of such written notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. The compensation and any costs and expenses of the mediation shall be borne equally by the Parties. Any arbitration commenced under this Section shall not be initiated until following the completion of the mediation detailed herein; provided, however, that if a Party refuses to participate in the mediation process as provided herein, the other Party may immediately initiate arbitration as set forth in this Section 21. Any dispute that remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration in accordance with the procedures set forth in this Section 21.
- (b) **Arbitration.** Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Contract, or the breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in a neutral location mutually agreed to by the Parties. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their

rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed confidential.

- (c) **Judicial Relief.** Either Party may petition a court of appropriate jurisdiction, as described in Section 23, for non-monetary relief relating to any claim of breach of this Contract in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 21.

22. **Governing Law.** This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Arizona without regard to principles of conflict of laws.

23. **Venue.** Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Contract, each Party hereto irrevocably: (i) consents to the exclusive jurisdiction of the federal courts sitting in Phoenix, Arizona; provided, however, that if the federal courts sitting in Phoenix, Arizona refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Maricopa, State of Arizona; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract."

24. **Assignment.** Neither Party shall assign or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party: (i) without relieving itself from liability hereunder, transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Contract to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party; or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Any assignment in violation of this provision shall be deemed to be null and void.

25. **Events of Default/Remedies.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Contract if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if such failure is not remedied within ten (10) days after written notice;
- (c) the failure to perform any material covenant or obligation set forth in this Contract (except to the extent constituting a separate Event of Default, and except for TSD's, or its

designee's, obligations to deliver the Product or produce the Minimum Contract Quantity, the remedies for which are set forth herein and in Sections 26 and 27) if such failure is not remedied within thirty (30) days after written notice; provided such thirty (30) day period shall be extended for an additional period not to exceed fifteen (15) days so long as the Defaulting Party is diligently attempting to remedy such failure;

- (d) any failure to comply with applicable interconnection requirements including, but not limited to, operating the System in parallel with the APS distribution system without having received explicit permission from APS to do so;
- (e) such Party becomes bankrupt;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Contract to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if, during any consecutive ninety (90) day period under this transaction, there have occurred three (3) or more TSD failures as that term is used in Section 26, regarding which TSD shall be deemed to be the Defaulting Party and regarding which APS shall also be entitled to its remedies under Section 26.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction under this Contract consistent with the provisions of the succeeding paragraph; (ii) withhold any payments due to the Defaulting Party under this Contract; and (iii) suspend performance.

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. The Non-Defaulting Party shall also calculate any amounts that it owes or owed to the Defaulting Party on or before the Early Termination Date (including any payments due to the Defaulting Party and withheld in the preceding paragraph). The Non-Defaulting Party shall take this total amount owed to the Defaulting Party and net it against the Settlement Amount (which shall also include any accrued but unpaid amounts due to the Non-Defaulting Party on or before the Early Termination Date) to arrive at a single payment amount (the "Termination Payment"). The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. Notwithstanding the foregoing, in no event shall any Termination Payment made by APS to TSD, together with any amounts otherwise paid by APS to TSD under this Contract, exceed the Aggregate Contract Price.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

26. **Failure to Deliver Product.** If TSD fails to deliver any portion of the Contract Quantity actually produced and required to be delivered under the terms of this Contract, TSD shall pay APS for any such deficiency in an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price plus reasonable legal costs incurred by APS in enforcement and protection of its rights under this Contract. Each Party hereby stipulates that the payment obligations set forth above are reasonable in light of the anticipated harm and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.

27. **Failure to Produce the Minimum Contract Quantity.** If the System fails to produce the Minimum Contract Quantity as described in Section 6, APS shall be entitled, in its sole discretion, to either terminate this Contract or, upon written notice to TSD, modify the Contract Quantity accordingly. In the event that APS exercises such right to terminate, neither APS nor TSD shall have any further obligation to one another under this Contract except that the provisions contained in Sections 16 and 29 shall survive any such termination, together with any other provisions that survive termination by operation of law. In addition, APS shall be entitled to recover damages associated with such termination, in accordance with the procedures set forth in Section 25. Specifically, since pursuant to Section 7 APS may pay TSD in advance for RECs that it is entitled to receive beyond the term of payment under this Agreement, an early termination pursuant to this Section 27 will result in APS having paid for RECs that it did not yet receive. Accordingly, APS shall be entitled to recover damages associated with a termination under this Section 27 by declaring an Early Termination Date and calculating a Settlement Amount in accordance with the procedures set forth in Section 25.

28. **Taxes.** TSD shall pay or cause to be paid, all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Product prior to its delivery to APS. APS shall pay or cause to be paid, all Taxes on or with respect to the Product after delivery from TSD (other than ad valorem, franchise, or income taxes which are related to the sale of the Product and therefore the responsibility of TSD). Nothing herein shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under the law. Each Party shall indemnify, defend and hold the other Party harmless from any liability against all of any Taxes for which the indemnifying Party is liable.

29. **Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party, unless a claim is due to the other Party's willful misconduct. Each Party shall indemnify, defend and hold harmless the other Party against any Taxes for which such Party is responsible under Section 28.

30. **Forward Contract.** The Parties acknowledge and agree that this transaction is a forward contract and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that the transaction, together with this Contract, form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

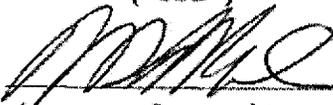
31. **Force Majeure.** To the extent either Party, or TSD's designee, is prevented by Force Majeure from carrying out, in whole or part, its obligations under the transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall 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.

32. Non-FERC Jurisdictional. The Product will be RECs, as defined herein, and shall not be subject to the jurisdiction of the Federal Energy Regulatory Commission or successor agency or commission under the Federal Power Act.

33. Entire Agreement; Amendments. This Contract contains the entire agreement of the Parties and there are no oral or written representations or understandings or agreements between the Parties respecting the subject matter of this Contract, which are not expressed herein. No amendment or modifications to this Contract shall be enforceable unless reduced to writing and executed by both Parties.

By its signature below, Participant acknowledges that it has read and understands this Contract and agrees to be bound by all of the terms and conditions set forth herein.

Tempe School District #3  
("TSD")

Signed: 

Name: WILLIAM MUNCH

Title: GOVERNING BOARD PRESIDENT

Date: APRIL 21, 2010

**EXHIBIT A**  
**Production Based Incentive - PV**  
**REC Certificate and Bill of Sale / Invoice**

**PARTICIPANT** ("Seller") hereby transfers and delivers to Arizona Public Service Company ("APS") the Environmental Attributes associated with the energy produced by the solar system (the "System") as described in the CREDIT PURCHASE AGREEMENT between the Parties dated \_\_\_\_\_ (the "Contract"). Terms used but not defined herein shall have the meaning set forth in the Contract.

The Photovoltaic System is located at \_\_\_\_\_.

<u>Monthly Meter Read Date</u>	<u>KWh generated</u>
_____, 20____	_____
_____, 20____	_____
_____, 20____	_____

Total PV Quarterly Production: \_\_\_\_\_ kWh x \$ \_\_\_\_\_ per kWh = \$ \_\_\_\_\_

**Total Amount Due: \$ \_\_\_\_\_**

One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from the Renewable Energy resource, as defined in the Contract.

Seller further attests, warrants and represents as follows:

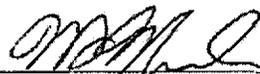
- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to APS is its one and only sale of the Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such Environmental Attributes;
- iii) the System identified above produced the number of kWh above during the period indicated above; and
- iv) Seller covenants that all RECs required to be delivered hereunder satisfy all Arizona Renewable Energy regulatory requirements set forth in the Contract;

This serves as a bill of sale, transferring from Seller to APS all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the above referenced energy.

Contact Person: \_\_\_\_\_ phone: \_\_\_\_\_; fax: \_\_\_\_\_

ACH Account Information/Instructions: \_\_\_\_\_

**PARTICIPANT**

Signed: <u></u>	Bank Name _____
Name: <u>WILLIAM MUNCH</u>	ABA# _____
Title: <u>GOVERNING BOARD PRESIDENT</u>	Acct.# _____
Date: <u>APRIL 21, 2010</u>	Ref: _____



7. The System meets the Equipment Qualifications identified in Exhibit E attached to the Contract;
8. The System is operating correctly; and
9. **PARTICIPANT** further certifies that it has title to and ownership of all RECs associated with the energy produced by the System and is legally able to transfer ownership of such RECs to APS in connection with the Contract and has provided documentation of such title and ownership to APS as requested by APS in its sole discretion.

I certify that all statements made in this Certificate are correct to the best of my knowledge and that I have the authority to bind **PARTICIPANT** to the statements made herein.

**PARTICIPANT  
("PARTICIPANT ")**

Signed:   
 Name: WILLIAM MUNCH  
 Title: GOVERNING BOARD PRESIDENT  
 Date: APRIL 21, 2010

**ACKNOWLEDGED AND AGREED:**

**ARIZONA PUBLIC SERVICE COMPANY  
("APS")**

Signed: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**EXHIBIT C**  
**PHOTOVOLTAIC SYSTEMS**  
**ELIGIBLE PROJECT COSTS**

The following costs, subject to review and approval by APS in its sole discretion, may be included in total eligible project cost:

- **Photovoltaic equipment capital cost for Major System Components and all parts and materials as necessary for proper functioning of the system**
- **Engineering and design cost**
- **Construction and installation costs. For projects in which the generation equipment is part of a larger project, only the construction and installation costs directly associated with the installation of the energy generating equipment are eligible**
- **Engineering feasibility study costs**
- **Building permit costs**
- **Sales tax and use tax**
- **On-site System measurement, monitoring and data acquisition equipment**
- **Necessary mounting hardware and installation costs excluding any costs that might have been incurred had a photovoltaic system not been installed, such as roof resurfacing, roof replacement or replacement of roof structural elements due to failure or need to upgrade for purposes other than solar array mounting.**
- **Cost of capital included in the System price by the vendor, contractor or subcontractor (the entity that sells the System) is eligible if paid by the owner of the System**
- **Interconnection costs, including:**
  - **Electric grid interconnection application fees**
  - **Metering costs associated with interconnection**

**EXHIBIT D**  
**RESERVATION APPLICATION**  
**[ATTACHED]**

Revised -  
reid 1-22-10  
# 10746



**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

*Schools/Gov Program*

This Incentive Program is funded by APS customers and approved by the Arizona Corporation Commission  
How did you hear about the APS Renewable Energy Incentive Program?

Brochure at Event  Annual Use Letter  Print Ad  TV  Website  Radio  Other \_\_\_\_\_

**RESERVATION APPLICATION**

Customer Name	<i>Tempe School District / Scales Tech Academy</i>		
Installation Address	<i>1115 W. 5th St.</i>		
APS Account Number *	<i>547616281</i>	Meter Number * (6 digits)	<i>J88991</i>
<small>*If there is currently no electrical service at the installation site, please leave account and meter number blank and check here. <input type="checkbox"/></small>			

Contact Name	<i>Steve Pomroy</i>		
Business Phone	<i>480 642 1548 ext 7601</i>	Alternate Phone	<i>480 861-1112</i>
E-mail Address	<i>spomroy@tempeschools</i>	Fax Number	<i>480-784-1278</i>
Mailing Address	<i>1430 W. E/NA RAE <sup>009</sup> Tempe, AZ 85281</i>		

**Access Information:**  
Is your electric meter located behind a fence or gate?  Yes  No  
Do you plan to install the Utility Disconnect at the service entrance?  Yes  No

**Customer Type (Please check appropriate box):**  
 Office Building  Healthcare  Recreational Facility  Educational/University  Manufacturing/Industrial  
 Mining  Hotel  Government  Dairy  Residential  Communications Facility  Military  
 Water Treatment Plant  Religious  Other \_\_\_\_\_

Is the Customer a dealer or manufacturer of any of the components proposed in the qualifying system, or an employee of a dealer or manufacturer?  Yes  No



Renewable Energy

**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**SYSTEM INFORMATION** (Please contact your dealer if unsure of the information to provide in this section)

Estimated Installation Date July 2010 Is this a system expansion?  Yes  No

PV Module Manufacturer Evergreen Model # ES-A-20 UL Listing UL-1703

Panel Rating in DC Watts (PV Module DC Watts W-STC Rating) 75,000

Inverter Manufacturer SATCON Model # PS-75 UL Listing UL-1741

Estimated Total Project Costs\* of equipment necessary to produce electricity \$547,500

- Total Project Costs as defined in the Credit Purchase Agreement (may include eligible financing, if applicable).
- PLEASE NOTE: The amount you provide for Estimated Total Project Costs will be used as the maximum amount for determining the 60% project cost threshold.

**REQUIRED ATTACHMENTS** (The following information is required in addition to this form to complete the reservation):

- Written system description
- Listing of major components, including the vendor and part numbers
- Any additional pertinent system or component information currently known

**INSTALLER INFORMATION** (If same as equipment dealer, check here )

Installer Name (please supply full legal name) Solarcity Corp

Contact Name Mystie Cho Telephone 650-963-5129

Fax 650-240-1672 Email mcho@solarcity.com

Mailing Address 393 Vintage Park Drive, Suite 410 Foster City Ca.

Installer's Arizona Registrar of Contractors (AZROC) License Information

Number RC 245450 Class K-11 Expiration 3/31/2010 94404

**EQUIPMENT DEALER INFORMATION**

Dealer Name (please supply full legal name) SAME As Above

Contact Name \_\_\_\_\_ Telephone \_\_\_\_\_

Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Mailing Address \_\_\_\_\_

Arizona Registrar of Contractors (AZROC) License Information

Number \_\_\_\_\_ Class \_\_\_\_\_ Expiration \_\_\_\_\_



**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**SYSTEM OWNER INFORMATION**

Company Name (please supply full legal name) SolarCity Corporation  
Contact Name Mystic Cho Telephone 650-963-5129  
Fax 650-240-1672 E-mail mcho@solarcity.com  
Mailing Address 393 Vintage Park Drive Suite 140 Foster City, CA 94404

**NET BILLING AND NET METERING RATES**

Please indicate your rate plan choice for compensation received from APS for the power generated by your PV System that will be delivered to the APS distribution system.

- EPR-2 (Energy sent back to the APS grid will be purchased by APS at wholesale price, often called "net billing")  
 EPR-6 (Energy sent back to the APS grid will appear as a kWh credit on your bill, often called "net metering", payment at wholesale price for excess credits at year end) **NOTE: In order to qualify for this rate, the total AC inverter rating(s) CAN NOT exceed 125% of the customer's metered peak demand in the last twelve months.**

Rate schedules are posted @ [www.aps.com](http://www.aps.com) or call 602-318-1924.

**INCENTIVE REQUEST**

Please review the following information prior to completing the Incentive Request below. Payment of the requested incentive is subject to the following Incentive Program guidelines:

- A. Each year, APS establishes a quarterly spending cap for this Incentive Program. Once APS reaches that cap, it will place any subsequent Incentive Reservation Request ("Reservation") on a wait list until funds again become available under the cap. APS will notify any applicant whose Reservation is placed on the wait list.
- B. If funds are available under the cap, the Reservation will be accepted by APS and the applicant will be notified. Acceptance of the Reservation is not a guarantee of payment. Payment is contingent upon execution of a Credit Purchase Agreement ("CPA") within thirty (30) days following APS' acceptance of the Reservation and compliance with the terms of the CPA. Within this same time period, a copy of a signed contract between the customer and installer/developer must be provided. Payment is also contingent upon complete installation of the System within 365 days following APS' acceptance of the Request. If the CPA is not timely executed, or if the applicant fails to complete the installation of the System within the required time period or otherwise fails to comply with the terms of the CPA, the Reservation will be cancelled.
- C. Payment shall be made in accordance with the terms of the CPA for the lesser of: (i) the contract term of the CPA; or (ii) until the date on which the aggregate payment by APS equals the aggregate contract price, with such aggregate contract price meaning "the lesser of either sixty percent (60%) of the Total Project Cost as provided in the approved reservation application, or sixty percent (60%) of The Total Project Cost provided as of the Commissioning of the System".



Renewable Energy

**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**Requested Renewable Energy Credit (REC) Agreement Term Incentive:**

- 10-Year -- up to \$0.182/kWh
- 15-Year -- up to \$0.168/kWh
- 20-Year - 10-Year Payments -- up to \$0.225/kWh
- 20-Year - 20-Year Payments -- up to \$0.162/kWh

**Requested Annual Production Based Incentive:**

Total system connected kW: 75 kWdc Total system connected kW: 64 kWac

System Size: 75 kW x Annual kWh per kW: 1800 = Anticipated Annual kWh Production\*

Anticipated Annual kWh Production 135,000 x \$ .182 per kWh (REC Term Incentive)

= Estimated Annual Incentive Payment \$ 24,570

**\*NOTE: Annual system production CAN NOT exceed annual metered consumption**

FBI Ranking Score (as calculated from FBI Ranking Calculator located at apa.com): N/A

Will the quarterly production vary throughout the calendar year?  Yes  No

If yes, how? Summer = 60%

Will payment be assigned to an installer, dealer or manufacturer of the qualifying system?  Yes  No

If yes, name and address to which payment should be sent SolarCity  
Same as installer

**CONFIDENTIALITY.** Neither Party shall disclose any non-public, confidential or proprietary information relating to the Reservation (the "Confidential Information") to any third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) without the other Party's prior written consent. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with this Confidentiality provision. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Paragraph, although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Paragraph, whether a claim is based in contract, tort, or otherwise.



**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**CUSTOMER:**

Steve Pomroy  
Name (Please Print)

Director of Facilities Management/Tempe School District # 3  
Title/Business Name

[Signature]  
Signature

1-22-10  
Date

**NOTE THAT ANY MATERIAL CHANGES TO THE INFORMATION PROVIDED IN THIS INCENTIVE RESERVATION REQUEST MUST BE PROVIDED TO APS THROUGH AN AMENDED INCENTIVE RESERVATION REQUEST. FAILURE TO SUBMIT AN AMENDED INCENTIVE RESERVATION REQUEST AS REQUIRED MAY JEOPARDIZE CUSTOMER'S ELIGIBILITY TO RECEIVE THE INCENTIVE PAYMENT FROM APS.**

Submit request electronically to [commercial-renewables@aps.com](mailto:commercial-renewables@aps.com) or mail to:

**APS Renewable Energy Incentive Program  
Production Based Incentives  
PO Box 53999, MS 9649  
Phoenix, AZ 85072-3933**

**EXHIBIT E**  
**EQUIPMENT QUALIFICATIONS**

- All components of the PV System must be new and must not have been previously placed in service in any other location or for any other application
- All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of UL 1703.
- The inverter must be listed to UL 1741.
- All other electrical components must be UL listed.
- All systems shall be installed with an array angle above horizontal (horizontal tilt angle) between 0 degrees and 60 degrees, and an array azimuth angle from due south of plus or minus 110 degrees of due south. The shade factor shall not exceed 59%.
- PV modules must be covered by a manufacturer's warranty of at least twenty (20) years.
- Inverters must be covered by a manufacturer's warranty of at least five (5) years. The remaining operational life must be supported by a planned maintenance or equipment replacement schedule.
- Participant must be the original purchaser of the System.
- It must be a complete solar system, which includes solar panels, inverter, and all other related equipment required to provide AC electricity to Participant's premises.
- It must satisfy all APS Interconnection Requirements. A copy of the APS Interconnection Requirements is available on [aps.com](http://aps.com) or can be obtained by calling 602-328-1924. It is important to note that only an authorized APS representative can provide permission for your PV system to operate in parallel to the APS distribution system.
- The PV System must be installed consistent with the manufacturer's recommendations and comply with all applicable governmental statutes, codes, ordinances, rules and regulations, as well as generally accepted engineering, safety and installation practices.
- The Project must comply will all applicable local, state, and federal regulations
- Installations must meet applicable governmental statutes, codes, ordinances, and accepted engineering and installation practices
- APS may request copies of any documents to assure compliance with government, institutional, or program requirements that are either explicitly or implicitly described in this Credit Purchase Agreement.

EXHIBIT C-2



**SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT  
GRID-TIED PHOTOVOLTAIC SYSTEM**

THIS SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT ("Contract") between Arizona Public Service Company ("APS"), and Casa Grande Elementary School District, ("CGESD" or "Participant"), (collectively referred to herein as the "Parties," and each individually referred to herein as a "Party") shall be effective as of \_\_\_\_\_, 201\_\_ (the "Effective Date").

**RECITALS**

**WHEREAS**, APS is a public utility that provides energy to its retail customers in the State of Arizona;

**WHEREAS**, CGESD desires to replace some of the energy that it would otherwise purchase from APS with energy generated from a photovoltaic system installed on its property (the "System");

**WHEREAS**, CGESD, or its designee, intends to install, maintain and own the System, or otherwise have title to and ownership of the Renewable Energy Credits (as defined herein) associated with the output of the System;

**WHEREAS**, APS is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including a Renewable Energy Standard and Tariff. "Renewable Energy Standard and Tariff or RES" means the Arizona Renewable Energy Standard Rules, A.A.C. R14-2-1801 *et seq.*, as the same may be amended from time to time.

**WHEREAS**, CGESD desires to sell and APS desires to purchase certificates representing the Environmental Attributes (as defined herein) associated with the energy produced by the System in order to comply with its obligations under the RES;

**WHEREAS**, this Contract sets forth the terms and conditions for the sale and purchase of such certificates; and

NOW, THEREFORE, in consideration of the above recitals and the mutual agreement of the Parties set forth below, the following terms and conditions shall apply to this Contract:

**TERMS AND CONDITIONS**

1. **Definitions.** The following definitions apply to terms used in this Contract and in the reservation request.

"Aggregate Contract Price" means the lesser of either sixty percent (60%) of the Total Project Cost as provided in the approved reservation application in Exhibit D, or sixty percent (60%) of the Total project Cost as of the Commissioning of the System.

"Arizona Registrar of Contractors" or "ROC" means the Arizona regulatory agency for the licensing and oversight of contractors.

"Authority Having Jurisdiction ("AHJ") means the governmental agency or sub agency which regulates the construction process applicable to the System.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal

place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Commissioning Deadline" means the date that is 365 days following the Reservation Date. The Commissioning Deadline shall be extended on a day-for-day basis as a result of any Force Majeure event, as defined herein, or in accordance with Section 3.

"Commissioning of the System" shall occur only after all conditions precedent to commercial operation of the System have been satisfied, as documented by the certificate attached hereto as Exhibit B.

- (a) **CGESD**, or its designee, shall have obtained and be in compliance with all governmental and regulatory authorizations required for the construction, and operation of the Project, including, but not limited to, any and all permits and/or approvals as required by an AHJ, or if the site is not governed by an AHJ, **CGESD**, or its designee, must provide certification in lieu of AHJ clearance, acceptable to APS in its reasonable discretion;
- (b) The System shall have been installed by a contractor holding an active license appropriate for installation of the System with the Arizona Registrar of Contractors;
- (c) **CGESD** shall have executed an Interconnection Agreement and the System shall meet all applicable interconnection requirements, specifically including, but without limitation, the requirement that the System not be activated or paralleled with the APS distribution system without the express permission from an authorized representative of APS following inspection by APS;
- (d) The System shall meet the Equipment Qualifications identified in Exhibit E attached hereto;
- (e) **CGESD**, or its designee, shall have installed a meter socket(s), pursuant to Section 10 herein;
- (f) **CGESD**, or its designee, shall have installed, at **CGESD**'s, or its designee's, expense, the necessary dedicated phone lines in accordance with Section 10 herein; and
- (g) **CGESD** shall be subject to an established rate schedule, either pursuant to an executed Special Contract-Solar or by application of one of APS' pre-established rates.

"Contract Quantity" means the RECs associated with the annual production of the System as specified in Section 6.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in connection with any new arrangements which replace this Contract; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Contract.

"Defaulting Party" has the meaning set forth in Section 25.

"Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Certificates; greenhouse gas or emissions reductions, credits, offset, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the

generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes associated with the provision of electricity services.

"Financing Rate" means the interest rate charged to CGESD, or its designee, by its lender in connection with the financing of the Project and disclosed to APS pursuant to Section 12 herein. In the event that the CGESD, or its designee, does not use third party financing in connection with the Project, the Financing Rate shall mean the internal cost of capital calculated by CGESD, or its designee, subject to review and approval by APS in its sole discretion. In no event shall such Financing Rate exceed the Prime Rate as of the Reservation Date plus five percent (5%), regardless of the actual interest rate that may be charged to CGESD, or its designee.

"Forecasted Quantity" means an amount of the Product, measured on the basis of a calendar quarter, that is at least seventy-five percent (75%) of the amount of the Product represented on CGESD's Initial Production Profile or Annual Production Profile (as set forth in Section 4 and 9), as applicable, for the same quarterly period.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing, Force Majeure shall not be based on (a) CGESD's, or its designee's, delay or inability to obtain financing, or other economic hardship of any kind; (b) CGESD's, or its designee's, inability to economically use the System; or (c) loss or failure of materials or equipment for the System.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Contract, determined in a commercially reasonable manner.

"Generating Facility" means all or part of the Participant's, or its designee's, electrical generator(s) or inverter(s) together with all protective, safety, and associated equipment necessary to produce electric power at the Participant's, or its designee's, facility.

"Interconnection Agreement" means the agreement, together with appendices, signed between APS and the Participant, covering the terms and conditions governing the interconnection and parallel operation of the Generating Facility with APS.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

"kWh" means kilowatt hour.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Contract, determined in a commercially reasonable manner.

"Major System Components" means PV Panels and Inverter.

"Minimum Contract Quantity" means RECs associated with a minimum production from the System which shall mean, for purposes of this Contract, the production of at least fifty percent (50%) of the Quarterly Contract Quantity in every calendar quarter hereunder, together with the production of at least the Forecasted Quantity in one out of every two consecutive calendar quarters hereunder, subject to adjustment of the Contract Quantity pursuant to Section 6.

"Month" means a calendar Month.

"Non-Defaulting Party" has the meaning set forth in Section 25.

"OEM" means Original Equipment Manufacture.

"Prime Rate" means the lowest rate of interest on bank loans at a given time and place, offered to preferred borrowers as published in the Wall Street Journal on the Reservation Date.

"Project" means the System owned by CGESD, or its designee, which is a photovoltaic system utilizing solar energy as the energy source for the solar system.

"Project Site" means CGESD property located in Casa Grande, Arizona.

"Quarterly Contract Quantity" means the Contract Quantity divided equally into four calendar quarters or such other quarterly schedule provided by CGESD.

"Renewable Energy" means energy derived from resources that are regenerative or for all practical purposes can not be depleted. Resources that qualify as Renewable Energy, provided that they meet any and all requirements set forth in the RES, include moving water (hydro, tidal and wave power) thermal gradients in ocean water, wind, solar power, geothermal, hydropower, landfill gas, various other forms of biomass, and municipal solid waste.

"Renewable Energy Credit" ("REC") means: (i) the Environmental Attributes associated with the generation of power from a Renewable Energy resource and (ii) the REC reporting rights arising therefrom or connected therewith. One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from one (1) or more Renewable Energy sources, as defined by the RES.

"Replacement Price" means the price (including its transaction costs), determined by APS in a commercially reasonable manner, at which APS purchases (if at all) or installs capacity to generate its own substitute RECs for the deficiency or, absent such a purchase, the market price indexed at the closest geographic location to the System's installation, if any, and if none is established or available, then at a market price determined solely by APS in a commercially reasonable manner.

"Reservation Date" means the date on which CGESD has been notified that its reservation has been accepted, which shall trigger the start of the 365-day time period for the Commissioning of the System as evidenced by CGESD's executed Reservation application attached hereto as Exhibit D.

"Special Contract – Solar" or "SCS" means the agreement between APS and Participant for electric power supply and consumption, a copy of which is attached as Exhibit F hereto.

"Settlement Amount" means, with respect to a transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a terminated transaction pursuant to Section 25.

"Tax Benefits" means, Renewable Energy related tax credits established under Section 45 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, except for any credits or other tax benefits that are associated with any carbon tax or other assessment (regardless of how any present or future law or regulation attributes or allocates such characteristics).

"Total Project Cost" means the total costs directly associated with the installation of the equipment necessary to produce solar energy to generate electricity to heat and/or cool building interiors, provide hot water and/or provide for other energy needs at Participant's facility. The Total Project Cost may also include costs associated with financing the installation of the System, provided that such costs are disclosed by the Participant, or its designee, and provided further that such costs will be included at a rate not to exceed the Financing Rate. The Total Project Cost shall not include any non-financing expenses incurred after the Commissioning of the System, which shall be defined in this Contract.

"Transmission Owner" means APS, and its successors and assigns, in its capacity as provider of interconnection services under the Interconnection Agreement.

2. **Term of the Contract.** Ten (10) years beginning with the Commissioning of the System ("Term").

3. **Commissioning of the System.** If Commissioning of the System (including all conditions precedent as set forth in Section 1 of this Contract) is not completed by the Commissioning Deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System; provided, however, that the Commissioning Deadline may be extended on a day-for-day basis for up to ninety (90) days if the System is substantially completed and APS approves, in its sole discretion the extension, such approval not to be unreasonably withheld.

As soon as reasonably practicable following the completion of the conditions precedent for Commissioning of the System, CGESD, or its designee, must present to APS a certificate in the form attached hereto as Exhibit B (the "Commissioning Certificate"), evidencing that such conditions precedent have been satisfied. Following the receipt of such Commissioning Certificate, APS will conduct an inspection of the System and countersign the Commissioning Certificate confirming that such conditions precedents have been satisfied.

4. **Development Milestones.** Not more than sixty (60) days following the execution of this Contract or one hundred twenty (120) days following the Reservation Date, whichever is longer, CGESD, or its designee, shall provide to APS proof of project development, a production profile for the System for each calendar quarter for the Term of the Contract (the "Initial Production Profile"), proof of an executed installation agreement, proof of submission of building and/or construction permits, and must have submitted an application for an Interconnection Agreement. If CGESD, or its designee, fails to provide such documentation by the stated deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System. CGESD may also terminate this Contract in writing at any time prior to Commissioning of the System; provided, however, that CGESD may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated by CGESD.

5. **Product.** Renewable Energy Certificates or RECs as defined herein. CGESD agrees to transfer to APS any and all RECs purchased by APS pursuant to this Contract for the Term of this Contract. CGESD shall complete and deliver to APS a REC Certificate and Bill of Sale/Invoice as described in Section 17 herein.

6. **Contract Quantity.** RECs associated with up to **586,500** kWhs per calendar year for the Term of this Contract. The Parties acknowledge that following the submittal of the proof of project development described in Section 4 above, CGESD shall have ten (10) days to amend, in writing, the Contract Quantity herein; provided, however, that such amendment shall not increase the Contract Quantity by more than ten percent (10%), subject to available program funding as determined by APS at its sole discretion, or, in the alternative, the amendment shall not decrease the Contract Quantity by more than twenty percent (20%) (the "Amendment Deadband"). In the event the amendment submitted is outside the Amendment Deadband, the reservation shall be considered rejected as amended and this Contract shall be automatically terminated. CGESD may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated in accordance with this provision.

APS shall receive and pay for any and all RECs delivered up to the Contract Quantity. If CGESD fails to deliver any RECs associated with energy produced by the System, APS shall be entitled to damages for such RECs not delivered, in accordance with Section 26 herein. In addition, if the System fails to produce the Minimum Contract Quantity, APS shall be entitled, in its sole discretion, to either terminate this Contract or modify the Contract Quantity in accordance with Section 27 herein.

7. **Contract Price.** APS shall pay CGESD **\$0.182** for each REC associated with a kWh of Renewable Energy actually produced by the System up to the maximum Contract Quantity.

APS shall be obligated to pay CGESD, or its payment designee if such designation has been made, the Contract Price until the earlier of: (i) the date that is **Ten (10)** years after the Commissioning of the System; or (ii) the date on which the aggregate payment by APS to CGESD, or such payment designee, under this Contract equals the Aggregate Contract Price.

The Parties expressly acknowledge and agree that the Aggregate Contract Price, which shall be paid by APS over the time period described herein, represents full and total payment for the RECs associated with all energy produced by the System, up to the maximum Contract Quantity, for the Term of this Contract. Accordingly, APS shall retain the sole and exclusive rights to the RECs associated with the Renewable Energy produced by the System, up to the maximum annual Contract Quantity, for the full Term of this Contract and CGESD shall provide REC Certificates to APS as described in Section 17, even after full payment has been made by APS in accordance with the preceding paragraph. The purchase of any RECs in excess of the maximum annual Contract Quantity shall be subject to the mutual agreement of the Parties.

8. **CGESD's Obligation to Operate.** CGESD, or its designee, shall operate and maintain the System in accordance with applicable law, equipment manufacturers' recommendation and widely accepted industry practice, and, without relieving itself of any liability thereunder, maintain such documents and records necessary to confirm CGESD's, or its designee's, operation and maintenance of the Project in accordance with such standards. CGESD may, in its sole discretion, use third parties, to perform duties associated with this operation and maintenance obligation; provided, however, that CGESD shall remain fully and solely liable for the satisfaction of this obligation notwithstanding its use of third parties to perform associated duties.

9. **CGESD's Obligation to Provide Annual Production Profile.** Within ten (10) Business Days following the first anniversary of the Commissioning of the System, and during the same period each year thereafter, CGESD, or its designee, shall provide to APS a production profile for the System that shows expected production for the current calendar quarter as well as the next three (3) calendar quarters ("Annual Production Profile"). In the event APS does not receive a revised production profile each year thereafter, the most recent production profile received shall be used as the basis for establishing the production profile portion of the Minimum Contract Quantity from that point forward unless or until a new production profile is submitted. In the absence of any production profile, the defined term of the Contract Quantity as shown in Section 6 shall be used.

10. **Metering.** APS shall provide and set an electronic, utility-grade electrical meter ("Inverter-Output Meter") on the System that is compatible with the APS meter reading and billing systems. CGESD shall be responsible for all costs associated with the meters and any costs associated with the installation thereto.

CGESD shall provide, at CGESD's expense, a dedicated phone line to each generator meter and also to the facility service entrance section main billing meter and/or sub meters if necessary as determined by APS. Each dedicated phone line is to be landed on the APS-provided telephone interface module which is typically located within two (2) feet of the meter.

At CGESD's expense, CGESD shall be responsible for installing the meter socket and all associated equipment, the cost of which shall be borne solely by CGESD. The location of the Inverter-Output meter shall be approved by APS and shall be located so that APS has unassisted access to the meter in accordance with APS requirements, including but not limited to Section 300 of the APS ESRM ("Electric Service Requirements Manual") and Service Schedule 1 ("Terms and Conditions for Standard Offer and Direct Access Services").

APS will read the meter remotely for the purpose of providing metered data to CGESD, and its designee, in order that CGESD, or its designee, may prepare and send an invoice to APS pursuant to Section 11 below. In the alternative, or additionally, APS may read the meter at the Project Site.

11. **REC Certificate Delivery, Billing and Payment.** The calendar quarter shall be the standard period for all payments under this Contract. Within fourteen (14) days after the end of each calendar quarter, or as soon thereafter as reasonably practicable under the circumstances, APS shall provide the metered data to CGESD for the preceding calendar quarter, based on its Monthly read of CGESD's meter, which shall be done at the same time CGESD's standard electricity meter is read. CGESD, or its designee, shall use such metered data to complete its invoice (using the form referenced in Section 17 and attached as Exhibit A) for the payment obligations, if any, incurred hereunder during the preceding quarter based on the Monthly meter readings provided by APS. Within five (5) Business Days after its receipt of such information from APS, CGESD, or its designee, shall issue the invoice to APS. APS shall begin making payments based on such invoices after it has approved the Total Project Costs submitted by CGESD, or its designee, subject to the limitations set forth in Section 12 herein. APS shall make any required payment no later than thirty (30) days following its receipt of a quarterly invoice from CGESD, or its designee. CGESD expressly agrees that any payment for the Product to which it is entitled hereunder is hereby assigned to SolarCity Corporation. APS shall make all payments under this Contract to an Automatic Clearinghouse Credit (ACH) account designated by CGESD which may be in the name of SolarCity Corporation in accordance with the foregoing assignment. If CGESD's, or its designee's, invoice is received more than twenty (20) days after the end of the calendar quarter, payment may be delayed an additional thirty (30) days. If an invoice is not received by APS within six (6) Months after the close of the calendar quarter, the right to receive payment for such quarter is waived.

12. **Documentation of Total Project Cost.** Within ninety (90) days after Commissioning of the System, CGESD, or its designee, shall provide APS with the Total Project Cost, together with any and all supporting documentation. APS shall have the right to request any additional financial documents that it deems necessary for the purpose of auditing and determining the validity of the Total Project Cost including, but not limited to, original invoices of each item included in the Total Project Costs. The invoice must show proof of payment and provide sufficient detail to identify the material or installation cost. CGESD, or its designee, shall provide any and all documentation requested by APS in connection with such audit. Costs that may be included by CGESD, or its designee, in the Total Project Costs are set forth in Exhibit C hereto. All costs listed in Exhibit C are subject to all limitations set forth in this Contract. APS shall have the right to dispute the Total Project Cost, and shall not be required to pay any portion of the Contract Price in excess of sixty percent (60%) of the undisputed Total Project Cost until it approves a Total Project Cost, which approval shall not be unreasonably withheld, or until a Total Project Cost is determined by arbitration as set forth herein. In such cases, once a Total Project Cost is determined and approved by APS, APS shall pay any additional portion of the Contract Price not already paid with the total payment by APS not to exceed sixty percent (60%) of the Total Project Cost.

13. **Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Contract, or adjust any invoice for any arithmetic or computational error, within twelve (12) Months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments upon request, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 13 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a transaction occurred, the right to payment for such performance is waived.

14. **CGESD's Representations and Warranties.** CGESD represents that each REC: (i) represents all of the Environmental Attributes associated with one (1) kWh of energy from the System; (ii) is associated with the generation of Renewable Energy and represents title to and claim over all Environmental Attributes associated with the specified kWh; and (iii) meets all requirements of the Arizona RES, as of the Effective Date of this Contract.

CGESD warrants that the RECs have not otherwise been, nor will they be sold, retired, claimed or represented as part of Renewable Energy output or sales, or used to satisfy obligations, in any other jurisdiction or for any other emissions compliance program requiring solar generation, and with the U.S. Attorney General, Federal Trade Commission and other entities providing guidelines on the advertisement of REC ownership claims.

CGESD represents and warrants it has and will have at the time of sale, title and ownership to the RECs sold hereunder as evidenced by documentation of the same that is acceptable to APS in its sole discretion.

CGESD represents and warrants that the RECs sold hereunder are delivered free and clear of all liens, encumbrances, and claims or any interest therein or thereto by any person arising prior to delivery to APS.

**15. Mutual Representations and Warranties.** Throughout the Term of this Contract, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Contract; (iii) the execution, delivery and performance of this Contract is 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; (iv) this Contract and each other document executed and delivered in accordance with this Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like; (v) it is acting for its own account, has made its own independent decision to enter into this Contract and as to whether this Contract is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract; (vi) it has entered into this Contract in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all RECs referred to in the Contract to which it is a party; and (vii) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

**16. Confidentiality.** No receiving Party shall itself, or permit its employees, consultants and/or agents to, disclose to any person, corporation or other entity any non-public, confidential or proprietary information which the Parties require to keep confidential ("Confidential Information") without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents and consultants and others who have a need for such Confidential Information and have agreed to keep such information confidential. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Contract. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

As used herein, Confidential Information shall not include any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Contract); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protects the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Contract.

The Parties acknowledge, however, that APS may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its regulatory requirements. In the event that APS intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Arizona Corporation Commission ("ACC"), the Residential Utility Consumer Office ("RUCO"), the Federal Energy Regulatory Commission ("FERC") or any employee, staff member, consultant, and/or agent of the foregoing, it shall give a minimum of ten (10) Business Days prior written notice of its intention so that CGESD may seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained, CGESD waives compliance with the terms hereof

with respect to such Confidential Information to the minimum extent necessary to comply with and solely for the purpose of such regulatory disclosure. Any information so submitted shall be identified as Confidential. Nothing herein shall be deemed to permit CGESD to disclose Confidential Information to the foregoing regulatory agencies, or any other party, unless such disclosure is otherwise permitted under this Confidentiality provision.

In addition, CGESD specifically agrees to use the following APS approved language in connection with this transaction in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service.

“The installation was facilitated, in part, by the APS Renewable Energy Incentive Program. This Program offers financial incentives to customers who add Renewable Energy systems to their homes or business. The Program is funded by APS customers and approved by the Arizona Corporation Commission.”

Any other language used in connection with such public communications that specifically relates to the APS Renewable Energy Incentive Program or this Contract must be approved in advance by APS. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate that, in such event, they will enter into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Confidentiality provision shall be binding with respect to such disclosure. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Section, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Section, whether a claim is based in contract, tort, or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree, or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. In no event shall a Party's directors, management, employees, agents, or consultants be individually liable for any damages resulting from the disclosure of any Confidential Information in violation of the provisions of this Section.

The Parties expressly acknowledge and agree that no third party, including any developer or installer of the System is expressly bound by the provisions of this Section 16, and CGESD understands that in order to maintain the confidential nature of any of its Confidential Information with respect to such third party, it should enter into a separate confidentiality agreement with any such third party.

**17. Administration of Contract.** Each Party hereby designates the employee identified below as its administrator for purposes of this Contract. Each Party may change its designated administrator(s) by giving not less than two (2) days prior written notice of its new administrator to the other Party.

**CGESD Administrator:**

Contact Name:  
Telephone No.:  
Fax No:

**APS Reservation Coordinator**

Contact Name: Reservation Coordinator  
Telephone No.: (602) 328-1924  
Fax No.: (602) 328-1991

**Invoices:**

Attention: APS Energy Settlements  
Telephone No.: (602) 250-3150  
Fax No.: (602) 250-2325

In consideration of APS' purchase of the Product herein, CGESD Administrator shall provide the APS Energy Settlements with a REC Certificate and Bill of Sale/Invoice, in the form attached hereto as Exhibit A ("REC Certificate"), which shall serve as a quarterly invoice referenced in Section 11 herein. CGESD shall provide the REC Certificate on a quarterly basis, in accordance with Sections 7 and 11 herein, for the full Term of this Contract.

18. **Notices.** All notices or other communications given, delivered or made under this Contract by either Party to the other Party will be in writing and may be delivered personally, by first class mail, overnight delivery service or by facsimile. All notices shall be delivered or sent to the other Party at the address shown below or to any other address as the Party may designate by two (2) days prior written notice given in accordance with this paragraph.

**If to CGESD:**

**Company:**  
**Address:**

**Contact**  
**Telephone No.:**  
**Fax No:**

*With a copy to:*  
**Telephone No.:**  
**Fax No:**

If to APS:

**Company:** Arizona Public Service Company  
**Address:** P.O. Box 53933  
Phoenix, AZ 85072-3933

**Contact:** APS Renewable Energy  
Mail Station 9649

**Telephone No.:** (602) 250-2547  
**Fax No.** (602) 250-3546

*With a copy to:*

**Attention:** Renewable Program Manager  
Mail Station 9649

19. **Independent Contractor.** The Parties agree that they are independent contractors for the purpose and activities undertaken in accordance with or as contemplated in this Contract, and that no Party will be considered or permitted to be an agent, servant, or partner of, nor in joint venture with, any other Party. It is expressly understood and agreed that neither Party has any right or authority to directly or indirectly incur any obligation or responsibilities on behalf of the other Party or commit the other Party to any matter or understanding or make any warranties or representations with respect to the Project, without the other Party's prior written consent. Each Party waives any and all rights that it may otherwise have under applicable laws or legal precedents to make any claims or take any action against the other Party or any of its related parties in respect of this Contract based on any theory of agency or fiduciary duty. The Parties agree that this Contract is intended solely for the benefit of the Parties hereto, and that nothing in this Contract shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Contract.

20. **Limitation of Remedies, Liability and Damages.** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES

ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**21. Alternative Dispute Resolution.** All disputes arising under this Contract are subject to the provisions of this Section 21.

- (a) Mediation. Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within thirty (30) calendar days of such written notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. The compensation and any costs and expenses of the mediation shall be borne equally by the Parties. Any arbitration commenced under this Section shall not be initiated until following the completion of the mediation detailed herein; provided, however, that if a Party refuses to participate in the mediation process as provided herein, the other Party may immediately initiate arbitration as set forth in this Section 21. Any dispute that remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration in accordance with the procedures set forth in this Section 21.
- (b) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Contract, or the breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in a neutral location mutually agreed to by the Parties. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their

rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed confidential.

- (c) **Judicial Relief.** Either Party may petition a court of appropriate jurisdiction, as described in Section 23, for non-monetary relief relating to any claim of breach of this Contract in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 21.

**22. Governing Law.** This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Arizona without regard to principles of conflict of laws.

**23. Venue.** Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Contract, each Party hereto irrevocably: (i) consents to the exclusive jurisdiction of the federal courts sitting in Phoenix, Arizona; provided, however, that if the federal courts sitting in Phoenix, Arizona refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Maricopa, State of Arizona; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract."

**24. Assignment.** Neither Party shall assign or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party: (i) without relieving itself from liability hereunder, transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Contract to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party; or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Any assignment in violation of this provision shall be deemed to be null and void.

**25. Events of Default/Remedies.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Contract if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if such failure is not remedied within ten (10) days after written notice;
- (c) the failure to perform any material covenant or obligation set forth in this Contract (except to the extent constituting a separate Event of Default, and except for CGESD's,

or its designee's, obligations to deliver the Product or produce the Minimum Contract Quantity, the remedies for which are set forth herein and in Sections 26 and 27) if such failure is not remedied within thirty (30) days after written notice; provided such thirty (30) day period shall be extended for an additional period not to exceed fifteen (15) days so long as the Defaulting Party is diligently attempting to remedy such failure;

- (d) any failure to comply with applicable interconnection requirements including, but not limited to, operating the System in parallel with the APS distribution system without having received explicit permission from APS to do so;
- (e) such Party becomes bankrupt;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Contract to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if, during any consecutive ninety (90) day period under this transaction, there have occurred three (3) or more CGESD failures as that term is used in Section 26, regarding which CGESD shall be deemed to be the Defaulting Party and regarding which APS shall also be entitled to its remedies under Section 26.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction under this Contract consistent with the provisions of the succeeding paragraph; (ii) withhold any payments due to the Defaulting Party under this Contract; and (iii) suspend performance.

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. The Non-Defaulting Party shall also calculate any amounts that it owes or owed to the Defaulting Party on or before the Early Termination Date (including any payments due to the Defaulting Party and withheld in the preceding paragraph). The Non-Defaulting Party shall take this total amount owed to the Defaulting Party and net it against the Settlement Amount (which shall also include any accrued but unpaid amounts due to the Non-Defaulting Party on or before the Early Termination Date) to arrive at a single payment amount (the "Termination Payment"). The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. Notwithstanding the foregoing, in no event shall any Termination Payment made by APS to CGESD, together with any amounts otherwise paid by APS to CGESD under this Contract, exceed the Aggregate Contract Price.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

26. **Failure to Deliver Product.** If CGESD fails to deliver any portion of the Contract Quantity actually produced and required to be delivered under the terms of this Contract, CGESD shall pay APS for any such deficiency in an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price plus reasonable legal costs incurred by APS in enforcement and protection of its rights under this Contract. Each Party hereby stipulates that the payment obligations set forth above are reasonable in light of the anticipated harm and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.
27. **Failure to Produce the Minimum Contract Quantity.** If the System fails to produce the Minimum Contract Quantity as described in Section 6, APS shall be entitled, in its sole discretion, to either terminate this Contract or, upon written notice to CGESD, modify the Contract Quantity accordingly. In the event that APS exercises such right to terminate, neither APS nor CGESD shall have any further obligation to one another under this Contract except that the provisions contained in Sections 16 and 29 shall survive any such termination, together with any other provisions that survive termination by operation of law. In addition, APS shall be entitled to recover damages associated with such termination, in accordance with the procedures set forth in Section 25. Specifically, since pursuant to Section 7 APS may pay CGESD in advance for RECs that it is entitled to receive beyond the term of payment under this Agreement, an early termination pursuant to this Section 27 will result in APS having paid for RECs that it did not yet receive. Accordingly, APS shall be entitled to recover damages associated with a termination under this Section 27 by declaring an Early Termination Date and calculating a Settlement Amount in accordance with the procedures set forth in Section 25.
28. **Taxes.** CGESD shall pay or cause to be paid, all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Product prior to its delivery to APS. APS shall pay or cause to be paid, all Taxes on or with respect to the Product after delivery from CGESD (other than ad valorem, franchise, or income taxes which are related to the sale of the Product and therefore the responsibility of CGESD). Nothing herein shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under the law. Each Party shall indemnify, defend and hold the other Party harmless from any liability against all of any Taxes for which the indemnifying Party is liable.
29. **Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party, unless a claim is due to the other Party's willful misconduct. Each Party shall indemnify, defend and hold harmless the other Party against any Taxes for which such Party is responsible under Section 28.
30. **Forward Contract.** The Parties acknowledge and agree that this transaction is a forward contract and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that the transaction, together with this Contract, form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.
31. **Force Majeure.** To the extent either Party, or CGESD's designee, is prevented by Force Majeure from carrying out, in whole or part, its obligations under the transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall 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.

32. **Non-FERC Jurisdictional.** The Product will be RECs, as defined herein, and shall not be subject to the jurisdiction of the Federal Energy Regulatory Commission or successor agency or commission under the Federal Power Act.

33. **Entire Agreement; Amendments.** This Contract contains the entire agreement of the Parties and there are no oral or written representations or understandings or agreements between the Parties respecting the subject matter of this Contract, which are not expressed herein. No amendment or modifications to this Contract shall be enforceable unless reduced to writing and executed by both Parties.

By its signature below, Participant acknowledges that it has read and understands this Contract and agrees to be bound by all of the terms and conditions set forth herein.

**Casa Grande Elementary School District  
("CGESD")**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**Production Based Incentive - PV**  
**REC Certificate and Bill of Sale / Invoice**

**PARTICIPANT** ("Seller") hereby transfers and delivers to Arizona Public Service Company ("APS") the Environmental Attributes associated with the energy produced by the solar system (the "System") as described in the CREDIT PURCHASE AGREEMENT between the Parties dated \_\_\_\_\_ (the "Contract"). Terms used but not defined herein shall have the meaning set forth in the Contract.

The Photovoltaic System is located at \_\_\_\_\_.

<u>Monthly Meter Read Date</u>	<u>KWh generated</u>
_____, 20__	_____
_____, 20__	_____
_____, 20__	_____

Total PV Quarterly Production: \_\_\_\_\_ kWh x \$ \_\_\_\_\_ per kWh = \$ \_\_\_\_\_  
**Total Amount Due: \$ \_\_\_\_\_**

One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from the Renewable Energy resource, as defined in the Contract.

Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to APS is its one and only sale of the Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such Environmental Attributes;
- iii) the System identified above produced the number of kWh above during the period indicated above; and
- iv) Seller covenants that all RECs required to be delivered hereunder satisfy all Arizona Renewable Energy regulatory requirements set forth in the Contract;

This serves as a bill of sale, transferring from Seller to APS all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the above referenced energy.

Contact Person: \_\_\_\_\_ phone: \_\_\_\_\_; fax: \_\_\_\_\_

ACH Account Information/Instructions: \_\_\_\_\_

**PARTICIPANT**

Signed: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Bank Name \_\_\_\_\_  
 ABA# \_\_\_\_\_  
 Acct.# \_\_\_\_\_  
 Ref: \_\_\_\_\_



7. The System meets the Equipment Qualifications identified in Exhibit E attached to the Contract;
8. The System is operating correctly; and
9. **PARTICIPANT** further certifies that it has title to and ownership of all RECs associated with the energy produced by the System and is legally able to transfer ownership of such RECs to APS in connection with the Contract and has provided documentation of such title and ownership to APS as requested by APS in its sole discretion.

I certify that all statements made in this Certificate are correct to the best of my knowledge and that I have the authority to bind **PARTICIPANT** to the statements made herein.

**PARTICIPANT**  
**("PARTICIPANT ")**

Signed: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**ARIZONA PUBLIC SERVICE COMPANY**  
**("APS")**

Signed: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**EXHIBIT C**  
**PHOTOVOLTAIC SYSTEMS**  
**ELIGIBLE PROJECT COSTS**

The following costs, subject to review and approval by APS in its sole discretion, may be included in total eligible project cost:

- Photovoltaic equipment capital cost for Major System Components and all parts and materials as necessary for proper functioning of the system
- Engineering and design cost
- Construction and installation costs. For projects in which the generation equipment is part of a larger project, only the construction and installation costs directly associated with the installation of the energy generating equipment are eligible
- Engineering feasibility study costs
- Building permit costs
- Sales tax and use tax
- On-site System measurement, monitoring and data acquisition equipment
- Necessary mounting hardware and installation costs excluding any costs that might have been incurred had a photovoltaic system not been installed, such as roof resurfacing, roof replacement or replacement of roof structural elements due to failure or need to upgrade for purposes other than solar array mounting.
- Cost of capital included in the System price by the vendor, contractor or subcontractor (the entity that sells the System) is eligible if paid by the owner of the System
- Interconnection costs, including:
  - Electric grid interconnection application fees
  - Metering costs associated with interconnection

**EXHIBIT D**  
**RESERVATION APPLICATION**  
**[ATTACHED]**

# 10954

Priority #1  
Revised 2-11-10  
Jaf



PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST

USE Schools/Gov't Program Funds

This Incentive Program is funded by APS customers and approved by the Arizona Corporation Commission  
How did you hear about the APS Renewable Energy Incentive Program?

- Brochure at Event  Annual Use Letter  Print Ad  TV  Website  Radio  Other

RESERVATION APPLICATION

Customer Name Cactus Middle School - Casa Grande Elementary Sch Dist  
Installation Address 1220 E. Karlson Rd.  
APS Account Number \* 291550282 Meter Number \* (6 digits) EB6175  
\*If there is currently no electrical service at the installation site, please leave account and meter number blank and check here.

Contact Name Frank Corder  
Business Phone 520-251-1857 Alternate Phone 520-836-4782  
E-mail Address Frank.Corder@cgakm.k12.az Fax Number \_\_\_\_\_  
Mailing Address 220 W. Karlson Rd. Casa Grande, AZ 85122

Access Information:  
Is your electric meter located behind a fence or gate?  Yes  No  
Do you plan to install the Utility Disconnect at the service entrance?  Yes  No

- Customer Type (Please check appropriate box):
- Office Building  Healthcare  Recreational Facility  Educational/University  Manufacturing/Industrial
  - Mining  Hotel  Government  Dairy  Residential  Communications Facility  Military
  - Water Treatment Plant  Religious  Other

Is the Customer a dealer or manufacturer of any of the components proposed in the qualifying system, or an employee of a dealer or manufacturer?  Yes  No



Renewable Energy

Priority #1

**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**SYSTEM OWNER INFORMATION**

Company Name (please supply full legal name) Solar City Corporation  
 Contact Name Christine Tomiyasu Telephone 650-638-1028  
 Fax 650-963-5129 E-mail Christine@SolarCity.com  
 Mailing Address 393 Vintage Park Dr. #140 Foster City CA 94404

**NET BILLING AND NET METERING RATES**

Please indicate your rate plan choice for compensation received from APS for the power generated by your PV System that will be delivered to the APS distribution system.

- EPR-2 (Energy sent back to the APS grid will be purchased by APS at wholesale price, often called "net billing")
- EPR-6 (Energy sent back to the APS grid will appear as a kWh credit on your bill, often called "net metering", payment at wholesale price for excess credits at year end) **NOTE: In order to qualify for this rate, the total AC inverter rating(s) CAN NOT exceed 125% of the customer's metered peak demand in the last twelve months.**

Rate schedules are posted @ [www.aps.com](http://www.aps.com) or call 602-328-1924.

**INCENTIVE REQUEST**

Please review the following information prior to completing the Incentive Request below. Payment of the requested incentive is subject to the following Incentive Program guidelines:

- A. Each year, APS establishes a quarterly spending cap for this Incentive Program. Once APS reaches that cap, it will place any subsequent Incentive Reservation Request ("Reservation") on a wait list until funds again become available under the cap. APS will notify any applicant whose Reservation is placed on the wait list.
- B. If funds are available under the cap, the Reservation will be accepted by APS and the applicant will be notified. Acceptance of the Reservation is not a guarantee of payment. Payment is contingent upon execution of a Credit Purchase Agreement ("CPA") within thirty (30) days following APS' acceptance of the Reservation and compliance with the terms of the CPA. Within this same time period, a copy of a signed contract between the customer and installer/developer must be provided. Payment is also contingent upon complete installation of the System within 365 days following APS' acceptance of the Request. If the CPA is not timely executed, or if the applicant fails to complete the installation of the System within the required time period or otherwise fails to comply with the terms of the CPA, the Reservation will be cancelled.
- C. Payment shall be made in accordance with the terms of the CPA for the lesser of: (i) the contract term of the CPA; or (ii) until the date on which the aggregate payment by APS equals the aggregate contract price, with such aggregate contract price meaning "the lesser of either sixty percent (60%) of the Total Project Cost as provided in the approved reservation application, or sixty percent (60%) of The Total Project Cost provided as of the Commissioning of the System".

Priority #1



**Renewable Energy**  
**PHOTOVOLTAIC SYSTEM GRID-TIED**  
**PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

*Requested Renewable Energy Credits (REC) Agreement Term Incentive:*

- 10-Year -- up to \$0.182/kWh
- 15-Year -- up to \$0.168/kWh
- 20-Year - 10-Year Payments -- up to \$0.225/kWh
- 20-Year - 20-Year Payments -- up to \$0.162/kWh

*Requested Annual Production Based Incentive:*

Total system connected kW: 345 kWdc    Total system connected kW: 300 kWac

System Size: 345 kW x Annual kWh max kW: 1700 = Anticipated Annual kWh Production\*

Anticipated Annual kWh Production 586,500 x \$ 0.182 per kWh (REC Term Incentive)

= Estimated Annual Incentive Payment \$ \$106,743

**\*NOTE: Annual system production CAN NOT exceed annual metered consumption**

FBI Ranking Score (as calculated from FBI Ranking Calculator located at apa.com): N/A

Will the quarterly production vary throughout the calendar year?  Yes  No

If yes, how? Summer production will be approx 60% of annual

Will payment be assigned to an installer, dealer or manufacturer of the qualifying system?  Yes  No

If yes, name and address to which payment should be sent Same as Installer Info

**CONFIDENTIALITY.** Neither Party shall disclose any non-public, confidential or proprietary information relating to the Reservation (the "Confidential Information") to any third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) without the other Party's prior written consent. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with this Confidentiality provision. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Paragraph, although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Paragraph, whether a claim is based in contract, tort, or otherwise.



Priority #1

**PHOTOVOLTAIC SYSTEM GRID-TIED  
PRODUCTION BASED INCENTIVE RESERVATION REQUEST**

**CUSTOMER:**

Frank Corder

Name (Please Print)

Casa Grande Elem Sch Dist.

Title/Business Name

[Signature]

Signature

1-21-10

Date

**NOTE THAT ANY MATERIAL CHANGES TO THE INFORMATION PROVIDED IN THIS INCENTIVE RESERVATION REQUEST MUST BE PROVIDED TO APS THROUGH AN AMENDED INCENTIVE RESERVATION REQUEST. FAILURE TO SUBMIT AN AMENDED INCENTIVE RESERVATION REQUEST AS REQUIRED MAY JEOPARDIZE CUSTOMER'S ELIGIBILITY TO RECEIVE THE INCENTIVE PAYMENT FROM APS.**

Submit request electronically to [commercial.renewables@aps.com](mailto:commercial.renewables@aps.com) or mail to:

APS Renewable Energy Incentive Program  
Production Based Incentives  
PO Box 53999, MS 9649  
Phoenix, AZ 85072-3933

## EXHIBIT E

### EQUIPMENT QUALIFICATIONS

- All components of the PV System must be new and must not have been previously placed in service in any other location or for any other application
- All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of UL 1703.
- The inverter must be listed to UL 1741.
- All other electrical components must be UL listed.
- All systems shall be installed with an array angle above horizontal (horizontal tilt angle) between 0 degrees and 60 degrees, and an array azimuth angle from due south of plus or minus 110 degrees of due south. The shade factor shall not exceed 59%.
- PV modules must be covered by a manufacturer's warranty of at least twenty (20) years.
- Inverters must be covered by a manufacturer's warranty of at least five (5) years. The remaining operational life must be supported by a planned maintenance or equipment replacement schedule.
- Participant must be the original purchaser of the System.
- It must be a complete solar system, which includes solar panels, inverter, and all other related equipment required to provide AC electricity to Participant's premises.
- It must satisfy all APS Interconnection Requirements. A copy of the APS Interconnection Requirements is available on [aps.com](http://aps.com) or can be obtained by calling 602-328-1924. It is important to note that only an authorized APS representative can provide permission for your PV system to operate in parallel to the APS distribution system.
- The PV System must be installed consistent with the manufacturer's recommendations and comply with all applicable governmental statutes, codes, ordinances, rules and regulations, as well as generally accepted engineering, safety and installation practices.
- The Project must comply with all applicable local, state, and federal regulations
- Installations must meet applicable governmental statutes, codes, ordinances, and accepted engineering and installation practices
- APS may request copies of any documents to assure compliance with government, institutional, or program requirements that are either explicitly or implicitly described in this Credit Purchase Agreement.