

### Solar Power Purchase Agreement

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

<b>Purchaser:</b>		<b>Seller:</b>	
Name and Address	City of Ann Arbor 301 E Huron St Ann Arbor, MI 48104 Attention: Atleen Kaur, City Attorney	Name and Address	Enerlogics Networks, Inc. 7935 Cliffview Drive Youngstown, OH 44514 Attention: Scott Ameduri
Phone	(734) 794-6000	Phone	(216) 362-3000 x303
Fax	None	Fax	None
E-mail	sustainability@a2gov.org	E-mail	sameduri@enerlogics.com
Premises Ownership	Purchaser [X] owns [ ] leases the Premises.	Additional Seller Information	
Tax Status	Exempt governmental entity		
Project Name	Ann Arbor City Ground Mount and Rooftop Solar		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel systems described/listed in **Exhibit 2** (each a “**System**” or collectively the “**Systems**”) and installed on the real property or upon **Improvements** on the Premises other than the System(s), specifically the carports described in Schedules 2A and 2G to Exhibit 2. This Agreement contains a License to allow the construction, operation, and maintenance of the Improvements and the Systems upon the real property comprising each of Purchaser’s premises described or depicted in Schedules 2-A through 2-G to **Exhibit 2** (the “**Premises**”).

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

- Exhibit 1**            Pricing
- Exhibit 2**            System(s) Description, Delivery Point and Premises
- Exhibit 3**            General Terms and Conditions
- Exhibit 4**            Performance Guaranty (optional)

Purchaser: City of Ann Arbor

Seller: Enerlogics Networks, Inc.

Signature: \_\_\_\_\_

Printed Name: Milton Dohoney \_\_\_\_\_

Printed Name: Scott Ameduri

Title: City Administrator \_\_\_\_\_

Title: Member \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and substance:

\_\_\_\_\_  
Atleen Kaur  
City Attorney  
Date: \_\_\_\_\_

## Exhibit 1

### Pricing

1. **Initial Term:** Twenty (20) years, beginning on the Commercial Operation Date (the “**Initial Term**”).
2. **Additional Terms:** Up to two (2) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
3. **Contract Price:** The contract price shall be per \$/kWh of power produced by the Systems, according to the schedules for each System as set forth in Schedules 2A-2G of Exhibit 2 (collectively, the “**Contract Price**”). The first Contract Year for each System shall commence on the Commercial Operation Date of each System, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date of that System.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. A payment or performance bond is \_\_\_\_\_ is not XX being issued to Purchaser under this Agreement.
  - b. Statutory prevailing wage rates (e.g., Davis-Bacon) do XX do not \_\_\_\_\_ apply.
  - c. A Performance Guaranty is XX is not \_\_\_\_\_ being provided.
  - d. All prices in this Agreement are calculated based on a prepayment of \$3,419,000, which shall be allocated to the various Systems as described herein. \_\_\_\_\_
  - e. The Contract Price is inclusive of Seller’s Taxes (as defined in Section 3(d) of Exhibit 3) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:
  - a. Upgrades or repair to customer or utility electrical infrastructure (including: client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).
  - b. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
  - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - d. Roof membrane maintenance or reroofing work.
  - e. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).
  - f. Changes in System design caused by any inaccuracy or ambiguity in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

Nothing in this Section 5 shall be deemed to bar termination under Exhibit 3, Section 2(d)(i) if such additional costs cause a System to no longer be technically or economically viable.

**Exhibit 2**

**System(s) Description, Delivery Point and Premises**

**Exhibit 2-A Airport NE Hangers**

**SYSTEM DETAILS:**

<b>Site</b>	Ann Arbor Municipal Airport - Northeast Hangars
<b>Type</b>	Ground Mount
<b>Size (design kWdc)</b>	32
<b>Cost</b>	\$85,830
Energy (kWh)	39,340
Yield (kWh/kWdc)	1,229.4
Prepayment	\$0
Prepayment %	0%
Prepayment Credit Percentage of Energy	0%
PPA Rate Before Prepayment Credit	\$0.1394
PPA Rate Annual Escalation	1.50%
PPA Rate Net of Prepayment	\$0.1394
Initial Year at Full Rate	\$5,484
Less Prepayment Credit at 74% of Prepayment Percentage	\$0
Initial Remaining Payment	\$5,484
Remaining Payment / Total kWh	\$0.1394
Comparison Current DTE Cost	\$0.1437
Comparison Current DTE Cost for Solar kWh	\$5,652
Expected Percentage Savings	3%

**SYSTEM DESIGN:**



MUNICIPAL AIRPORT  
715 AIRPORT DR.  
CITY OF ANN ARBOR, MI  
031214703, 30236402 SOLAR ARRAY

SYSTEM INFORMATION	
GROUND MOUNT	
TILT ANGLE	20°
GRID MOUNTING	270° (E-W)
AC SYSTEM SIZE	26 MWac
SYSTEM EFFICIENCY	18%
NUMBER OF PHOTOVOLTAIC MODULES	64,000
MODULE QUANTITY	72
INVERTER TYPE	STRONGTIE
INVERTER QUANTITY	2
INVERTER RATED POWER	100 kW
INVERTER EFFICIENCY	98%
INVERTER TYPE	STRONGTIE
INVERTER RATED POWER	100 kW

SYMBOL	DESCRIPTION
[Red Line]	ROAD
[Blue Line]	UTILITY LINE
[Green Line]	CONCRETE DRIVE
[Yellow Line]	ASPHALT DRIVE
[Red Line]	ASPHALT DRIVE
[Blue Line]	UTILITY LINE
[Green Line]	CONCRETE DRIVE
[Yellow Line]	ASPHALT DRIVE
[Red Line]	ASPHALT DRIVE
[Blue Line]	UTILITY LINE
[Green Line]	CONCRETE DRIVE
[Yellow Line]	ASPHALT DRIVE
[Red Line]	ASPHALT DRIVE



**SITE RESTRICTIONS:** Must get permission to be on site from facilities manager before doing work.

**CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:**

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

Prepayment Credited as	0%	of (Annual Energy Production * PPA Rate per kWh)		
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)
1	39,340	33,439	\$0.1394	\$0.1394
2	39,143	33,272	\$0.1415	\$0.1415
3	38,948	33,105	\$0.1436	\$0.1436
4	38,753	32,940	\$0.1458	\$0.1458
5	38,559	32,775	\$0.1480	\$0.1480
6	38,366	32,611	\$0.1502	\$0.1502
7	38,174	32,448	\$0.1524	\$0.1524
8	37,984	32,286	\$0.1547	\$0.1547
9	37,794	32,125	\$0.1570	\$0.1570
10	37,605	31,964	\$0.1594	\$0.1594
11	37,417	31,804	\$0.1618	\$0.1618
12	37,230	31,645	\$0.1642	\$0.1642
13	37,043	31,487	\$0.1667	\$0.1667
14	36,858	31,329	\$0.1692	\$0.1692
15	36,674	31,173	\$0.1717	\$0.1717
16	36,491	31,017	\$0.1743	\$0.1743
17	36,308	30,862	\$0.1769	\$0.1769
18	36,127	30,708	\$0.1796	\$0.1796
19	35,946	30,554	\$0.1822	\$0.1822
20	35,766	30,401	\$0.1850	\$0.1850

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$107,581
2	\$104,101
3	\$100,395
4	\$96,478
5	\$92,357
6	\$88,035
7	\$83,519
8	\$78,813
9	\$73,905
10	\$68,809
11	\$63,255
12	\$57,496
13	\$51,526
14	\$45,351
15	\$38,926
16	\$32,295
17	\$25,453
18	\$14,920
19	\$7,573
20	\$8,537



Prepayment Credited as	0%	of (Annual Energy Production * PPA Rate per kWh)			
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)	
1	100,864	85,734	\$0.1867	\$0.1867	
2	100,360	85,306	\$0.1895	\$0.1895	
3	99,858	84,879	\$0.1923	\$0.1923	
4	99,359	84,455	\$0.1952	\$0.1952	
5	98,862	84,033	\$0.1982	\$0.1982	
6	98,367	83,612	\$0.2011	\$0.2011	
7	97,876	83,194	\$0.2041	\$0.2041	
8	97,386	82,778	\$0.2072	\$0.2072	
9	96,899	82,364	\$0.2103	\$0.2103	
10	96,415	81,953	\$0.2135	\$0.2135	
11	95,933	81,543	\$0.2167	\$0.2167	
12	95,453	81,135	\$0.2199	\$0.2199	
13	94,976	80,729	\$0.2232	\$0.2232	
14	94,501	80,326	\$0.2266	\$0.2266	
15	94,028	79,924	\$0.2300	\$0.2300	
16	93,558	79,525	\$0.2334	\$0.2334	
17	93,091	79,127	\$0.2369	\$0.2369	
18	92,625	78,731	\$0.2405	\$0.2405	
19	92,162	78,338	\$0.2441	\$0.2441	
20	91,701	77,946	\$0.2477	\$0.2477	

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$316,961
2	\$306,920
3	\$296,271
4	\$285,049
5	\$273,266
6	\$260,934
7	\$248,064
8	\$234,668
9	\$220,711
10	\$206,227
11	\$190,559
12	\$174,317
13	\$157,490
14	\$140,086
15	\$121,997
16	\$103,328
17	\$84,065
18	\$42,494
19	\$21,569
20	\$24,315



## Exhibit 2-C Airport NW Hangers

### SYSTEM DETAILS:

Site	Ann Arbor Municipal Airport - Northwest Hangars
Type	Ground Mount
Size (design kWdc)	71
Cost	\$190,719
Energy (kWh)	87,997
Yield (kWh/kWdc)	1,239.4
Prepayment	\$0
Prepayment %	0%
Prepayment Credit Percentage of Energy	0%
PPA Rate Before Prepayment Credit	\$0.1444
PPA Rate Annual Escalation	1.50%
PPA Rate Net of Prepayment	\$0.1444
Initial Year at Full Rate	\$12,707
Less Prepayment Credit at 74% of Prepayment Percentage	\$0
Initial Remaining Payment	\$12,707
Remaining Payment / Total kWh	\$0.1444
Comparison Current DTE Cost	\$0.1488
Comparison Current DTE Cost for Solar kWh	\$13,097
Expected Percentage Savings	3%

### SYSTEM DESIGN:



**SITE RESTRICTIONS:** Must get permission to be on site from facilities manager before doing work.

### CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

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Prepayment Credited as	0%	of (Annual Energy Production * PPA Rate per kWh)			
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)	
1	87,997	74,797	\$0.1444	\$0.1444	
2	87,557	74,423	\$0.1466	\$0.1466	
3	87,119	74,051	\$0.1488	\$0.1488	
4	86,684	73,681	\$0.1510	\$0.1510	
5	86,250	73,313	\$0.1533	\$0.1533	
6	85,819	72,946	\$0.1556	\$0.1556	
7	85,390	72,581	\$0.1579	\$0.1579	
8	84,963	72,218	\$0.1603	\$0.1603	
9	84,538	71,857	\$0.1627	\$0.1627	
10	84,115	71,498	\$0.1651	\$0.1651	
11	83,695	71,141	\$0.1676	\$0.1676	
12	83,276	70,785	\$0.1701	\$0.1701	
13	82,860	70,431	\$0.1726	\$0.1726	
14	82,446	70,079	\$0.1752	\$0.1752	
15	82,033	69,728	\$0.1779	\$0.1779	
16	81,623	69,380	\$0.1805	\$0.1805	
17	81,215	69,033	\$0.1832	\$0.1832	
18	80,809	68,688	\$0.1860	\$0.1860	
19	80,405	68,344	\$0.1888	\$0.1888	
20	80,003	68,003	\$0.1916	\$0.1916	

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$224,388
2	\$217,068
3	\$209,263
4	\$201,006
5	\$192,308
6	\$183,183
7	\$173,643
8	\$163,700
9	\$153,323
10	\$142,547
11	\$130,774
12	\$118,564
13	\$105,905
14	\$92,809
15	\$79,179
16	\$65,113
17	\$50,601
18	\$31,516
19	\$15,998
20	\$18,034

## Exhibit 2-D Airport Steere Farm

### SYSTEM DETAILS:

Site	Ann Arbor Municipal Airport - Steere Farm (WTP Pumps)
Type	Ground Mount
Size (design kWdc)	605
Cost	\$1,621,305
Energy (kWh)	776,262
Yield (kWh/kWdc)	1,283.1
Prepayment	\$1,041,332
Prepayment %	64%
Prepayment Credit Percentage of Energy	45.6%
PPA Rate Before Prepayment Credit	\$0.0803
PPA Rate Annual Escalation	1.50%
PPA Rate Net of Prepayment	\$0.0437
Initial Year at Full Rate	\$62,334
Less Prepayment Credit at 74% of Prepayment Percentage	\$28,424
Initial Remaining Payment	\$33,910
Remaining Payment / Total kWh	\$0.0437
Comparison Current DTE Cost	\$0.0439
Comparison Current DTE Cost for Solar kWh	\$34,045
Expected Percentage Savings	0%

### SYSTEM DESIGN:



**SITE RESTRICTIONS:** Must get permission to be on site from facilities manager before doing work.

### CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

Prepayment	45.6%	of (Annual Energy Production * PPA Rate per kWh)
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Credited as				
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)
1	776,262	659,823	\$0.0803	\$0.0437
2	772,381	656,524	\$0.0815	\$0.0443
3	768,519	653,241	\$0.0827	\$0.0450
4	764,676	649,975	\$0.0840	\$0.0457
5	760,853	646,725	\$0.0852	\$0.0464
6	757,049	643,491	\$0.0865	\$0.0471
7	753,263	640,274	\$0.0878	\$0.0478
8	749,497	637,072	\$0.0891	\$0.0485
9	745,750	633,887	\$0.0905	\$0.0492
10	742,021	630,718	\$0.0918	\$0.0499
11	738,311	627,564	\$0.0932	\$0.0507
12	734,619	624,426	\$0.0946	\$0.0515
13	730,946	621,304	\$0.0960	\$0.0522
14	727,291	618,198	\$0.0974	\$0.0530
15	723,655	615,107	\$0.0989	\$0.0538
16	720,037	612,031	\$0.1004	\$0.0546
17	716,436	608,971	\$0.1019	\$0.0554
18	712,854	605,926	\$0.1034	\$0.0563
19	709,290	602,896	\$0.1050	\$0.0571
20	705,743	599,882	\$0.1066	\$0.0580

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$776,731
2	\$745,664
3	\$711,102
4	\$674,023
5	\$654,846
6	\$632,945
7	\$663,944
8	\$352,823
9	\$335,261
10	\$316,564
11	\$291,056
12	\$264,172
13	\$235,882
14	\$206,369
15	\$174,756
16	\$142,063
17	\$108,265
18	\$73,338
19	\$55,298
20	\$37,258



## Exhibit 2-E Water Recovery

### SYSTEM DETAILS:

Site	Water Recovery (WWTP)
Type	Ballasted Roof Mount
Size (design kWdc)	681
Cost	\$1,730,081
Energy (kWh)	788,363
Yield (kWh/kWdc)	1,157.7
Prepayment	\$768,142
Prepayment %	44%
Prepayment Credit Percentage of Energy	31.9%
PPA Rate Before Prepayment Credit	\$0.1143
PPA Rate Annual Escalation	1.50%
PPA Rate Net of Prepayment	\$0.0778
Initial Year at Full Rate	\$90,110
Less Prepayment Credit at 74% of Prepayment Percentage	\$28,745
Initial Remaining Payment	\$61,365
Remaining Payment / Total kWh	\$0.0778
Comparison Current DTE Cost	\$0.0779
Comparison Current DTE Cost for Solar kWh	\$61,399
Expected Percentage Savings	0%

### SYSTEM DESIGN:



#### WATER RECOVERY CENTER CITY OF ANN ARBOR, MI 681 KWDC, BALLASTED SOLAR ARRAY

SYSTEM INFORMATION	
TOTAL DC SYSTEM SIZE	681.0 KWDC
TOTAL AC SYSTEM SIZE	494.0 KWAC
DC/AC RATIO	1.37
INVERTER TYPE	BALLASTED
INVERTER MANUFACTURER	ABB
DC SYSTEM VOLTAGE	1500V
INVERTER VOLTAGE	480V
INVERTER VOLTAGE RANGE	480V - 600V
INVERTER TYPE	3P
DC SYSTEM SIZE	681.0 KWDC
AC SYSTEM SIZE	494.0 KWAC
DC/AC RATIO	1.37
MODULE ENERGY LOSS	4.0%
MODULE EFFICIENCY	17.0%
INVERTER	ABB
INVERTER MANUFACTURER	ABB
INVERTER TYPE	3P
INVERTER VOLTAGE	480V
INVERTER VOLTAGE RANGE	480V - 600V
INVERTER TYPE	3P
DC SYSTEM SIZE	681.0 KWDC
AC SYSTEM SIZE	494.0 KWAC
DC/AC RATIO	1.37
MODULE ENERGY LOSS	4.0%
MODULE EFFICIENCY	17.0%
INVERTER	ABB
INVERTER MANUFACTURER	ABB
INVERTER TYPE	3P
INVERTER VOLTAGE	480V
INVERTER VOLTAGE RANGE	480V - 600V
INVERTER TYPE	3P

LEGEND	
---	ROADS
---	RAILROADS
---	UTILITY LINES
---	EXISTING BUILDINGS
---	NEW BUILDINGS
---	EXISTING PAVEMENT
---	NEW PAVEMENT
---	EXISTING LANDSCAPE
---	NEW LANDSCAPE
---	EXISTING UTILITIES
---	NEW UTILITIES
---	EXISTING FENCES
---	NEW FENCES

**SITE RESTRICTIONS:** Must get permission to be on site from facilities manager before doing work.

### CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

Prepayment	31.9%	of (Annual Energy Production * PPA Rate per kWh)
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Credited as					
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)	
1	788,363	670,109	\$0.1143	\$0.0778	
2	784,421	666,758	\$0.1160	\$0.0790	
3	780,499	663,424	\$0.1178	\$0.0802	
4	776,597	660,107	\$0.1195	\$0.0814	
5	772,714	656,807	\$0.1213	\$0.0826	
6	768,850	653,523	\$0.1231	\$0.0839	
7	765,006	650,255	\$0.1250	\$0.0851	
8	761,181	647,004	\$0.1269	\$0.0864	
9	757,375	643,769	\$0.1288	\$0.0877	
10	753,588	640,550	\$0.1307	\$0.0890	
11	749,820	637,347	\$0.1326	\$0.0903	
12	746,071	634,160	\$0.1346	\$0.0917	
13	742,341	630,989	\$0.1367	\$0.0931	
14	738,629	627,835	\$0.1387	\$0.0945	
15	734,936	624,695	\$0.1408	\$0.0959	
16	731,261	621,572	\$0.1429	\$0.0973	
17	727,605	618,464	\$0.1450	\$0.0988	
18	723,967	615,372	\$0.1472	\$0.1003	
19	720,347	612,295	\$0.1494	\$0.1018	
20	716,745	609,233	\$0.1517	\$0.1033	

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.



## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$985,094
2	\$958,212
3	\$928,248
4	\$895,553
5	\$860,276
6	\$822,569
7	\$782,588
8	\$740,490
9	\$696,023
10	\$649,550
11	\$595,168
12	\$538,490
13	\$479,463
14	\$418,243
15	\$353,951
16	\$287,557
17	\$219,015
18	\$148,274
19	\$75,286
20	\$81,604



**CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:**

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

Prepayment Credited as	37.6%	of (Annual Energy Production * PPA Rate per kWh)		
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)
1	408,932	347,592	\$0.1163	\$0.0726
2	406,887	345,854	\$0.1180	\$0.0737
3	404,853	344,125	\$0.1198	\$0.0748
4	402,829	342,404	\$0.1216	\$0.0759
5	400,814	340,692	\$0.1234	\$0.0770
6	398,810	338,989	\$0.1253	\$0.0782
7	396,816	337,294	\$0.1272	\$0.0794
8	394,832	335,607	\$0.1291	\$0.0805
9	392,858	333,929	\$0.1310	\$0.0818
10	390,894	332,260	\$0.1330	\$0.0830
11	388,939	330,598	\$0.1350	\$0.0842
12	386,995	328,945	\$0.1370	\$0.0855
13	385,060	327,301	\$0.1391	\$0.0868
14	383,134	325,664	\$0.1411	\$0.0881
15	381,219	324,036	\$0.1433	\$0.0894
16	379,313	322,416	\$0.1454	\$0.0907
17	377,416	320,804	\$0.1476	\$0.0921
18	375,529	319,200	\$0.1498	\$0.0935
19	373,651	317,604	\$0.1520	\$0.0949
20	371,783	316,016	\$0.1543	\$0.0963

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

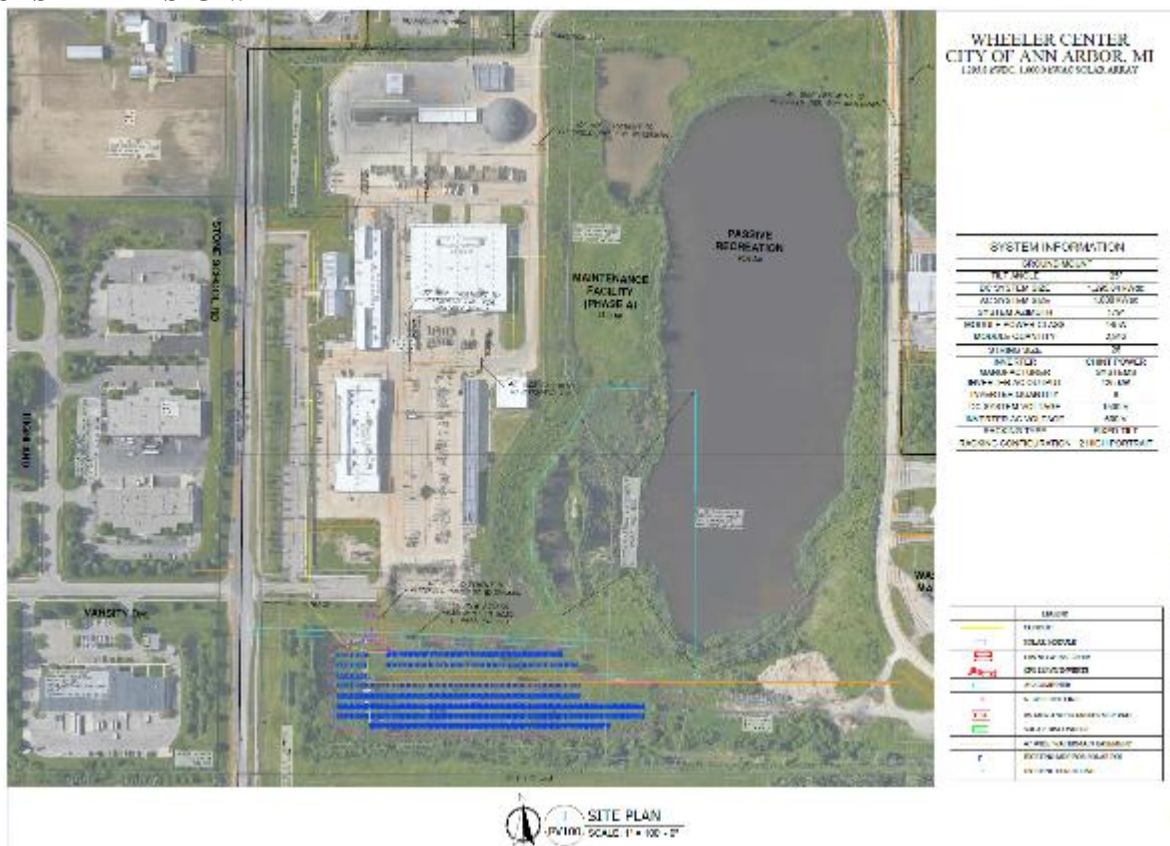
Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$466,399
2	\$454,103
3	\$440,274
4	\$425,093
5	\$408,639
6	\$390,992
7	\$372,233
8	\$352,446
9	\$331,501
10	\$309,587
11	\$283,738
12	\$256,777
13	\$228,677
14	\$199,522
15	\$168,859
16	\$137,190
17	\$104,493
18	\$70,745
19	\$35,922
20	\$38,937

## Exhibit 2-G Wheeler Center

### SYSTEM DETAILS:

Site	Wheeler Center
Type	Ground Mount
Size (design kWdc)	1,296
Cost	\$2,773,864
Energy (kWh)	1,502,526
Yield (kWh/kWdc)	1,159.4
Prepayment	\$1,140,608
Prepayment %	41%
Prepayment Credit Percentage of Energy	30.6%
PPA Rate Before Prepayment Credit	\$0.1288
PPA Rate Annual Escalation	1.50%
PPA Rate Net of Prepayment	\$0.0894
Initial Year at Full Rate	\$193,525
Less Prepayment Credit at 74% of Prepayment Percentage	\$59,219
Initial Remaining Payment	\$134,307
Remaining Payment / Total kWh	\$0.0894
Comparison Current DTE Cost	\$0.0890
Comparison Current DTE Cost for Solar kWh	\$133,679
Expected Percentage Savings	0%

### SYSTEM DESIGN:



**SITE RESTRICTIONS:** Must get permission to be on site from facilities manager before doing work.

**CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION:**

In order to incentivize operation and maintenance of the System by the Seller to increase Purchaser's self-supply, the contract price shall be based on the production of power by the System, according to the following schedule:

Prepayment Credited as	30.6%	of (Annual Energy Production * PPA Rate per kWh)		
Contract year	Projected Annual Energy Production (kWh)	Guaranteed Annual Energy Production (kWh, 85% of projected generation)	PPA Rate per kWh (Before Prepayment)	PPA Rate per kWh (Net of Prepayment)
1	1,502,526	1,277,148	\$0.1288	\$0.0894
2	1,495,014	1,270,762	\$0.1307	\$0.0907
3	1,487,539	1,264,408	\$0.1327	\$0.0921
4	1,480,101	1,258,086	\$0.1347	\$0.0935
5	1,472,701	1,251,795	\$0.1367	\$0.0949
6	1,465,337	1,245,537	\$0.1388	\$0.0963
7	1,458,010	1,239,309	\$0.1408	\$0.0977
8	1,450,720	1,233,112	\$0.1429	\$0.0992
9	1,443,467	1,226,947	\$0.1451	\$0.1007
10	1,436,249	1,220,812	\$0.1473	\$0.1022
11	1,429,068	1,214,708	\$0.1495	\$0.1037
12	1,421,923	1,208,634	\$0.1517	\$0.1053
13	1,414,813	1,202,591	\$0.1540	\$0.1069
14	1,407,739	1,196,578	\$0.1563	\$0.1085
15	1,400,700	1,190,595	\$0.1587	\$0.1101
16	1,393,697	1,184,642	\$0.1610	\$0.1118
17	1,386,728	1,178,719	\$0.1634	\$0.1134
18	1,379,795	1,172,826	\$0.1659	\$0.1151
19	1,372,896	1,166,961	\$0.1684	\$0.1169
20	1,366,031	1,161,127	\$0.1709	\$0.1186

*Projected production values assuming average weather conditions*

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

## TERMINATION VALUES

Contract Year	Termination Payment (\$) as defined in Section 11(b) of <b>Exhibit 3</b>
1	\$2,038,573
2	\$1,976,875
3	\$1,909,941
4	\$1,838,252
5	\$1,762,000
6	\$1,681,382
7	\$1,596,599
8	\$1,507,855
9	\$1,414,766
10	\$1,317,830
11	\$1,207,151
12	\$1,092,111
13	\$972,614
14	\$848,854
15	\$719,551
16	\$586,063
17	\$448,294
18	\$298,148
19	\$151,365
20	\$125,000

**Exhibit 3**

**General Terms and Conditions**

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### Exhibit 3

#### General Terms and Conditions

1. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System(s) during the Term (as defined in Section 2(a)). Electricity generated by the System(s) shall be delivered to Purchaser at the designated Delivery Point(s). Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises in addition to any amount self-supplied by the System(s) from other sources.
2. **Term and Termination.**
  - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 6) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “Term”).
  - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Term(s) of five (5) years each at a Contract Price to be agreed upon in writing.
  - c. **Tariffs.** The Parties acknowledge that the pricing reflects a reduction in costs of \$0.04/Wdc due to the June 6, 2022 announcement of 2-year suspension of new tariffs on solar PV modules; the pricing reflects a firm cost and that the Seller has made reasonable efforts to secure lower-priced components for the Systems. .
  - d. **Termination.**
    - i. **Due to Contract Price Adjustments or Lack of Project Viability.**
      - (1) **Prior to Commencement of Installation.** If, at any time after the Effective Date and prior to Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 5 of Exhibit 1, or Seller determines that the installation of any of the Systems listed in Exhibit 2 will not be technically or economically viable for any other reason, and (ii) the Parties have attempted to negotiate a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may either terminate this Agreement or specific System(s) by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages nor have any obligation to the other in connection with such termination if it occurs prior to Commencement of Installation of any System. If one or more Systems are terminated but the Agreement itself is not terminated by either Party, adjustments shall be made pursuant to this subsection (c).
      - (2) **After Commencement of Installation** After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise, except by written agreement of both Parties.
    - ii. **Termination by Purchaser for Delay.**
      - (1) **Delay for Commencement of Installation.** If Commencement of Installation has not occurred at a majority of the sites (other than individual Systems terminated pursuant to subsection (iii) which shall be subject to the terms thereof) ninety (90) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. Purchaser shall not be liable for any damages associated with such termination.
      - (2) **Delay for Commercial Operation.** If any System has not reached its Commercial Operation Date on or before March 31, 2024, Purchaser may terminate that System without liability under this Agreement.
      - (3) **Cause of Delay.** To the extent any delay under this subsection is attributed to a Force Majeure Event, Section 5 shall control. To the extent such delay is attributed to actions, omissions or breaches of representations by Purchaser, or inaccuracy or ambiguity in information provided by Purchaser, Seller

shall not be liable for any damages associated with termination of a System under this subsection (c)(ii).

iii. **Termination of Individual Systems Prior to Commercial Operation Date.**

- (1) Termination of an individual System prior to that System's Commercial Operation Date shall not be deemed to terminate this Agreement or alter the obligations of the Parties related to the other Systems except as described in this Section.
- (2) In the event a System is terminated under this subsection 2(c), Purchaser shall have the right to redirect any pre-payment amount for the terminated System to another System of Purchaser's choosing, and the Parties agree to meet and confer within ten (10) days to execute an amended and restated version of the applicable portion of Exhibit 2 to reflect the additional pre-payment amount in the Contract Price, and any other affected elements for that System. If the Parties cannot agree to an amended and restated exhibit for the System to which the prepayment from the terminated System is to be applied within thirty (30) days from the notice by Purchaser to Seller of the System to which the Purchaser wishes to apply the additional prepayment amount, then the prepayment funds for the terminated System shall be returned to Purchaser, and Purchaser shall have no further liability associated with the terminated System.
- (3) If at any point more than ninety percent (90%) of the Systems have been cancelled under Section 2(c)(i) or (ii), Seller shall have the option to terminate this Agreement thirty (30) days after such threshold has been met. In the case of such a termination, Purchaser shall have the right to purchase any System that has met its Commercial Operation Date at a Fair Market Value to be determined in accordance with the methodology set forth in Section 14(b)(ii).
  - (A) If Seller has cancelled any of the Systems pursuant to Section 2(c)(i) prior to the ninety percent (90%) threshold being reached, it will not cause a termination of the entirety of this Agreement, but it must at its own cost remove all such Systems and restore each location pursuant to Section 9.
  - (B) All prepayment funds for Systems that have not reached their Commercial Operation Date shall be returned to Purchaser within thirty (30) days from the termination date.
  - (C) If Purchaser has cancelled such Systems, then the Seller may deduct removal costs reasonably incurred to meet the obligations of Section 9 from the associated prepayment amounts attributable for each site. Seller shall have no further monetary obligations under this Agreement.

3. **Billing and Payment; Taxes.**

- a. **Prepayment.** Purchaser shall place into escrow on the Effective Date a prepayment in the amount of Three Million Four Hundred Nineteen Thousand Dollars (\$3,419,000). Such prepayment shall be credited to individual systems as indicated in Exhibit 2. The prepayments associated with each System shall be released to Seller as follows:
  - i. Purchaser will, upon request from Seller, release the associated funds to allow the purchase of materials for the Systems in accordance with the following schedule: fifty percent (50%) on the Effective Date; twenty-five percent (25%) at Commencement of Installation; and the remaining twenty-five percent (25%) on the Commercial Operations Date. In the event prepayment funds have been released from escrow under this provision, and the associated System is cancelled, Purchaser shall have the right to either assume ownership of the materials escrowed or receive repayment of the funds at Purchaser's sole discretion.
- b. **Monthly Charges.** Purchaser shall pay Seller monthly an amount calculated using the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 2** (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable rate per \$/kWh generated during the applicable month, as measured by the Meter (as defined in Section 10) less a prepayment credit of as specified in Exhibits 2A through 2G of the energy ("**Prepayment Credit**"). Additional costs for items differing from the assumptions in **Exhibit 1**, Section 4 are Purchaser's responsibility and must be approved by Purchaser in writing prior to such costs being incurred.
- c. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of

electricity produced by the System and delivered to the Delivery Point, (ii) the rate applicable to, and charges incurred by, Purchaser under this Agreement, (iii) the total gross amount due from Purchaser, (iv) Prepayment Credit utilized, (v) the net amount due from Purchaser, (vi) average net amount due per total kWh, (vii) remaining Prepayment Credit for future purchases; and (viii) and any other credits required under the terms of this Agreement.

d. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of the invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. Dollars.

e. **Taxes.**

i. **Seller's Taxes.** Seller is responsible for: (1) payment of any income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System; and (3) any sales tax resulting from the sale of electricity ("**Seller's Taxes**"). As the owner of the Systems, Seller shall also be entitled to claim all Incentives associated with the System unless and until such Systems are purchased by Purchaser.

ii. **Definitions.** For purposes of this Agreement,

(1) "**Incentives**" means (a) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (b) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (c) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (d) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (a) through (d) relating to the construction, ownership, use or production of energy from the System(s), provided that Incentives shall not include RECs (defined below) or other green attributes.

(2) "**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

#### 4. **RECs and Green Attributes.**

a. **Ownership.** The Contract Price shall entitle Purchaser to the benefit of, and all ownership interests in, the RECs and green attributes associated with the Systems. Seller shall cooperate with Purchaser in obtaining, securing and transferring any and all RECs. Seller shall not make any filing or statements inconsistent with Purchaser's ownership interests in the RECs and any other green attributes. If any RECs are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.

b. **Definition.** For purposes of this Agreement, "**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right 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, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

#### 5. **Project Completion.**

a. **Project Development.** Seller shall diligently pursue the development and installation of each System, subject to Section 2(c), Section 11, and the remaining provisions of this Section 5. Unless attributed to a Force Majeure Event or actions, omissions or breaches of representations of Purchaser, or inaccuracy or ambiguity in information provided by Purchaser, failure to reach a Commercial Operation Date on or before March 31, 2024 shall be deemed to be a material breach of this provision.

b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “Approval”):

- i. any zoning, land use and building permits required for Seller 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 Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

c. **Commencement of Installation.** Seller shall use commercially reasonable efforts to achieve Commencement of Installation of each System on or before ninety (90) days after the Effective Date. “**Commencement of Installation**” means the date that Seller or its installation contractor has begun physical installation of the System(s) on the Premises or has 1) filed permits and interconnection applications and 2) released purchase orders for key equipment.

d. **Force Majeure.**

i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.

ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination and (b) Seller shall remove the System as required under Section 9 (but Purchaser shall reimburse Seller for Seller’s removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate a System or the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

iii. **Definition.** For purposes of this Agreement, “**Force Majeure Event**” means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller or Purchaser, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; civil strike, work stoppage or lock-out; explosion; fire; earthquake; severe and abnormal weather condition or actions of the elements that prevents construction or operation of the System/s; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking or granting such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller’s control or due to a Force Majeure Event.

e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay, except if a Force Majeure Event prevents any System from reaching its Commercial Operation Date prior to March 31, 2024, Purchaser shall be entitled to termination of such System for delay under Section 2.

f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation for each System (the date of such notice, the “**Commercial Operation Date**”). “**Commercial Operation**” means the date the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to interconnect from the relevant utility and operate from the relevant Governmental Authority. Seller shall provide Purchaser with documentation to evidence that the System is ready to

begin Commercial Operation upon Purchaser's reasonable request.

**6. Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate, maintain, and repair the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulation and local building and electrical codes.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have fifteen (15) business days after receipt to approve or disapprove the design for each System. Failure by Purchaser to respond within such fifteen (15) business day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 2(c) above.
- c. **System Maintenance and Repair.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any maintenance or repairs resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(b) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Seller may not include in the Contract Price any amount based on electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser's Contract Price shall be adjusted to provide a credit for such amount as would have been paid if the System had been in operation in accordance with this Agreement.
- e. **Maintenance of Premises.** Purchaser shall, at no additional cost and expense beyond the Contract Price, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not cause or through negligence result in cessation of the ability to receive electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement results in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost with costs previously approved in writing by Purchaser, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- g. **Purchaser as a Permitting Authority.** For the avoidance of doubt, nothing in this Agreement shall be interpreted to

limit the City's ability to access the Premises in furtherance of its rights and duties as a permitting authority. The City may take any actions related to such role, including, but not limited to, performing inspections, walk-throughs, and reviewing plans, to ensure compliance with all relevant laws.

**7. Miscellaneous Rights and Obligations of the Parties.**

- a. Grant of License.** Purchaser grants Seller a non-exclusive irrevocable license (the "**License**") for so long as this Agreement remains in effect, with respect to any System subject thereof ("**License Term**") to access, construct, install, operate, maintain, and repair the System and Improvements on the Premises as defined for each System in **Exhibit 2**, including Schedules 2A-2G attached thereto, which by reference are incorporated into and made a part of this Agreement. The License may be extended to personnel of DTE as necessary for the interconnection or other required inspections of any System. During the term of this Agreement, Seller shall use the Premises solely to access, install, operate, maintain, and repair the Improvement/s and System/s as shown in Exhibit 2A-2G and for no other purpose or purposes without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. Seller shall not use the Premises in such a way as to disturb, or otherwise interfere with the intended use by Purchaser or other users of the Premises. During the License Term, Purchaser shall not violate Seller's rights, or authorize any third party to violate Seller's rights under the Licenses, to access the Premises in order to fulfill its obligations under this Agreement.

Seller agrees that it will not park any vehicles or leave any trailers or vehicles on the Premises except during initial construction or when the vehicle driver or other employee, contractor, subcontractor, or agent for Seller is on the Premises conducting activity associated with Seller's rights under the Agreement. Seller's employees, contractors, subcontractors, and agents will park their vehicles at a place where Purchaser allows them. Purchaser will be reasonable and accommodating to the maximum extent possible. Purchaser will consider written requests from Seller for temporary waiver of this requirement to allow Seller efficient and economical access for its authorized uses of the Premises. However, granting of the request is within the sole discretion of the Purchaser and Purchaser may require any reasonable conditions as a predicate for Seller's use of the Premises in violation of the general prohibitions described above.

This Agreement shall not be deemed or construed as transferring to Seller any real property interest in the Licensed Premises or any right in the nature of any real estate or real property interest in land, in whole or in part, irrespective of any expenditure by Seller in connection with the maintenance of the System.

- b. License and Use.** Seller may use the Premises only as follows: (i) Seller may install, maintain, or repair the System. Seller shall not modify the System from the approved design, except upon permission in writing granted by Purchaser; (ii) Seller must comply with all applicable laws, regulations, and ordinances; (iii) Seller must comply with the requirements of "Miss Dig" as set forth in MCL 460.721 through MCL 460.733 and as it may from time to time be amended; and iv) Seller may not transfer any rights under this Agreement to successors or assigns, except upon permission in writing granted by Purchaser. Seller's obligations with respect to compliance with "Miss Dig" requirements will survive termination of this Agreement.
- c. Maintenance and Installation Requirements.** The work of installing, operating, maintaining and repairing the System shall be done so as to not interfere with the proper and safe use or operation of the Premises and under the following general conditions:
- i. Any area of the Premises disturbed during installation, maintenance, or other activity by Seller shall be restored or repaired at completion of construction to a condition as good or better than existing immediately prior to the activity.
  - ii. Proper traffic control, where and when applicable, shall be maintained in accordance with current Purchaser's Public Services Area Standard Specifications.
  - iii. Seller's access to and ingress and egress from the Premises will occur during normal business hours, unless Purchaser provides prior authorization for access outside of normal business hours.
  - iv. Seller agrees to take reasonable precautions to minimize damage to the Premises, and to any other property, real or personal, of Purchaser's and of third parties, located within the Premises or in the public right-of-way, and shall at all times be obligated to properly maintain the Premises.

- v. Seller shall provide the City with at least forty-eight (48) hours' notice prior to the commencement of any activity permitted under this Agreement within or related to the Premises. For activity involving excavation, Seller shall provide at least fourteen (14) days' notice and receive approval from Purchaser for the schedule and scope of activity prior to undertaking any work. All such notices shall include a description of the nature, extent, and schedule of activity and may be given to the entity designated on the appropriate Exhibit and the below entity or its successor department:

Sustainability and Innovations Department  
301 E. Huron Street  
Ann Arbor, Michigan 48104

- vi. If Seller desires or is required by any regulatory body duly constituted and appointed in compliance with the laws of Michigan and having jurisdiction in the premises, including Purchaser, to revise, add to or alter in any manner whatsoever the System, Seller shall submit plans to Purchaser and/or any other necessary party and obtain written approval before any work or alteration is performed and the terms and conditions of this Agreement shall apply thereto.
  - vii. In the event of damage to the Premises or other property of Purchaser caused by Seller and not otherwise attributed to actions, omissions, or breaches of representations of Purchaser, or inaccuracy or ambiguity in information provided by Purchaser, Seller shall notify Purchaser promptly of the damage and Seller shall be responsible for making the repairs or compensating Purchaser for the damage in a manner acceptable to Purchaser, which acceptance shall not be unreasonably withheld. In the event of damage to the property of a third party, Seller shall notify the third party promptly of the damages and Seller shall be responsible for making the repairs or compensating the third party for the damage.
  - viii. All expenses in connection with the construction, installation, use, operation, maintenance, repair, relocation, removal, or abandonment of the System shall be borne by Seller.
- d. **Right to Inspect.** During the Term of the Agreement, Purchaser shall have the right to periodically inspect the Seller's System, with or without prior notice to Seller, to ensure compliance with the terms of this Agreement.
  - e. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
  - f. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System unless absolutely necessary to maintain the operations and integrity of the facility. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors.
  - g. **Insolation.** Purchaser acknowledges 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, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
  - h. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
  - i. Under this Agreement, Seller shall conform to Chapter 14 of Title I of the Code of the City of Ann Arbor as amended; which in part states "...that all craftsmen, mechanics and laborers employed directly on the site in connection with said improvements, including said employees of subcontractors, shall receive the prevailing wage for the corresponding classes of craftsmen, mechanics and laborers, as determined by statistics for the Ann

Arbor area compiled by the United States Department of Labor.” At the request of the City, any contractor or subcontractor shall provide satisfactory proof of compliance with the contract provisions required by the Section.

- ii. Pursuant to Resolution R-16-469 all public improvement contractors are subject to prevailing wage and will be required to provide to Purchaser payroll records sufficient to demonstrate compliance with the prevailing wage requirements. A sample Prevailing Wage Form is provided in the Appendix herein for reference as to what will be expected from contractors. Use of the Prevailing Wage Form provided in the Appendix section or a City-approved equivalent will be required along with wage rate interviews.
- iii. Where the Agreement and the Ann Arbor City Ordinance are silent as to definitions of terms required in determining contract compliance with regard to prevailing wages, the definitions provided in the Davis-Bacon Act as amended (40 U.S.C. 278-a to 276-a-7) for the terms shall be used.
- iv. Seller shall ensure that all contractors and subcontractors comply with all applicable laws and ordinances, including but not limited to compliance with the City’s Living Wage ordinance as stated in Chapter 23 of the Ann Arbor City Code. Contractor and all Subcontractors that are or become a “covered employer,” will pay those providing services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code; to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment and providing services under this Agreement in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.
- v. Seller agrees to comply with the nondiscrimination provision of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applications are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based on race, national origin or sex. Seller agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code. Purchaser shall notify Seller of any alleged violations and Seller shall have a reasonable amount of time to investigate and cure any violations. Purchaser acknowledges that the System at the Premises is not staffed.

**i. Liens.**

- i. **Lien Obligations.** 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, except such encumbrances as may be required to allow Seller access to the Premises, (each a “**Lien**”) on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** To the extent permitted by law, each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party’s property as a result of the indemnifying Party’s breach of its obligations under Section 7(f)(i).
- iii. **Municipal Corporation.** Seller acknowledges that it is aware that Purchaser, as a municipal corporation, is unable under Michigan’s Constitution to lend its credit and thus its ability to indemnify Seller is limited. Additionally, Seller is unlikely to have the ability to place a lien on Purchaser’s Premises for non-payment due to its status as a governmental entity.

**8. Relocation of System.** If, during the Term, Purchaser ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System, at Purchaser’s cost, in lieu of termination of the Agreement by Seller for a Default Event by Purchaser.

If such proposal is practically feasible and preserves the economic value of the Agreement for Seller, the Parties shall seek to



negotiate in goodfaith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement pursuant to Section 11(b)(ii).

9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement, subject to any extensions granted on the License Term, (provided Purchaser does not exercise its purchase option under Sections 14(b), 16(d) or 2(c) or any other buy-out or option to purchase provision herein), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **Measurement.**

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the Also Energy monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.

11. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":
- i. 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 Non-Defaulting Party of such failure to pay ("**Payment Default**"). Notwithstanding the foregoing, such Payment Default shall not cause a default related to any System for which payments have been received and any Payment Default related to a particular System shall be deemed a termination of the contract as related to that System only;
  - ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
  - iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
  - v. in the case of Purchaser as the Defaulting Party only, Purchaser (1) loses its rights to occupy and enjoy the Premises, unless (A) the Parties agree upon a relocation under Section 8 above, or (B) Purchaser pays the Termination Payment determined under Exhibit 2 within thirty (30) days after written request by Seller; or (2)

prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (A) is permitted under this Agreement, or (B) is cured within ten (10) days after written notice thereof from Seller.

**b. Remedies.**

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (1) that Purchaser cures the Default Event in full, or (2) of termination of this Agreement. Seller's rights under this Section 11(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement or the portions of the Agreement applicable to the related System in the case of a Payment Default, by providing five (5) days' prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (A) the applicable amount set forth in the Termination Payment Schedule set forth in Exhibit 2 for each System, and (B) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. In the event of a termination of specific Systems due to a Payment Default, the Termination Payment shall be as stated for that System in Exhibit 2 and no damages may be assessed for those Systems for which a Payment Default has not occurred.
  - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (A) the present value of the value of the reasonably expected cost of electricity from the utility over the Contract Price offset by the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination, including a re-payment, in full, of all pre-payment dollars; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

**c. Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Purchaser pursuant to Section 11(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller or elects to purchase the System for the Fair Market Value.

- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(ii) and payment of a Termination Payment determined pursuant to Section 11(b)(ii), if any, nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment

set forth in Section 11(b)(iii) and (iv), as applicable.

- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.
- iv. Regardless of whether this Agreement is terminated for a Default Event, Seller shall be entitled to return of any remaining prepayment amount.

**12. Representations and Warranties.**

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

- i. 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 will not violate any law; and this Agreement is the 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).
- ii. 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, Warranties and Covenants.** Purchaser represents and warrants to Seller the following:

- i. **Licenses.** (1) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the Licenses in Section 7, (2) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises 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 Premises, and (3) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
- ii. **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 is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (1) the Premises, (2) the Improvements on which the System is to be installed, if applicable, (3) Purchaser's planned use of the Premises and any applicable Improvements, and (4) Purchaser's estimated electricity requirements, is accurate in all material respects to the best of Purchaser's knowledge.
- iv. **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. Should the City of Ann Arbor form a municipal utility it will inform Seller within 30 days and make reasonable efforts to address the effect, if any, on this Agreement.
- v. **Use of Electricity.** Purchaser shall at all times be the end user of the electricity and will not resell, transfer, pass through or provision the electricity over to any third party. This provision does not prohibit outflows of electricity exported to the Purchaser's local distribution utility under a Michigan Public Service Commission approved net metering or distributed generation program.
- vi. **Site Utilization.** Throughout the Term of this Agreement, Purchaser will not sell, lease, sublease or license the Premises, or assign over its rights therein, to another party, in any way that impairs Seller from selling power under this Agreement or from accessing the Systems on the Premises and exercising its rights under the License. Breach of this provision is material.

vii. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

c. **Seller's Representations and Warranties.**

- i. **Other Agreements.** Neither the execution and delivery of this Agreement by Seller nor the performance by Seller 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 Seller is a party or by which Seller is bound.
- ii. **Accuracy of Information.** All information provided by Seller to Purchaser, as it pertains to (1) the Systems and the estimated generation thereof; (2) the planned design of the Systems, and (3) the ability of Purchaser to use the electricity generated by the Systems, is accurate in all material respects to the best of Seller's knowledge.
- iii. **Seller Status.** Seller is not a public utility or a public utility holding company as defined by Michigan law. Seller further represents and warrants that to the best of its knowledge and belief, based in part on its reliance upon the representations made by Purchaser, its sale of power herein does not subject it to being regulated as a public utility.
- iv. **Roof Damage.** If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
- v. **Other Damages.** If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(iv) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.

d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. IF A PERFORMANCE GUARANTY IS BEING PROVIDED PURSUANT TO SECTION 4(d) OF **EXHIBIT 1**, THE PERFORMANCE GUARANTY WILL REPRESENT A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
  - i. **Seller's Insurance.** Seller shall maintain or ensure the following insurance policies and coverages are maintained during the Term of this Agreements:
    - (1) Property and casualty insurance on the Systems for the replacement costs thereof,
    - (2) Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements specifically for the following coverages: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further there shall be no added exclusions or limiting endorsements that diminish the Purchaser's protections as an additional insured under the policy. The following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.
\$5,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products and Completed Operations Aggregate

- (3) Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
 Bodily Injury by Disease - \$500,000 each employee  
 Bodily Injury by Disease - \$500,000 each policy limit

- (4) Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements that diminish the Purchaser's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
- (5) Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$2,000,000.

Prior to commencement of any work under this Agreement, Seller shall provide to the Purchaser documentation satisfactory to the Purchaser, through Purchaser-approved means (currently myCOI), demonstrating it has obtained the required insurance policies, coverages and endorsements. The certificates of insurance endorsements and/or copies of policy language shall document that Seller satisfies the above requirements. Seller shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Seller shall provide the same documentation for its subcontractor(s) (if any).

Seller's commercial general liability and motor vehicle insurance shall be considered primary as respects any other valid or collectible insurance that Purchaser may possess, including any self-insured retentions Purchaser may have; and any other insurance Purchaser does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, Seller agrees to waive any right of recovery by its insurer against Purchaser for any insurance listed herein.

Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company(s); name and address of the agent(s) or authorized representative(s); name(s), email address(es), and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which may be approved by Purchaser, in its sole discretion; (c) that the policy conforms to the requirements specified Seller shall furnish Purchaser with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, Seller shall provide within 30 days a copy of the policy(ies) and all required endorsements to Purchaser. If any of the above insurance expires by their terms during the term of this Agreement, Seller shall deliver proof of renewal and/or new policies and endorsements to Purchaser at least ten days prior to the expiration date.

Any Insurance provider of Seller shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by Purchaser.

Purchaser reserves the right to require additional coverage and/or coverage amounts as may be included from time to time in the Detailed Specifications for the Project.

- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$5,000,000 annual aggregate or provide other evidence of self-insurance.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. **Ownership; Option to Purchase.**

a. **Ownership of System(s).**

- i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System(s), and all Incentives, and the System(s) will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

b. **Option to Purchase.**

- i. **Exercise of Option.** At the end of the seventh (7th), tenth (10th), and fifteenth (15<sup>th</sup>) 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 any of the System(s) from Seller on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System(s). Purchaser shall notify 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 completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. **Fair Market Value.** Upon a desire by Purchaser to exercise its option to purchase, or upon request of either Party in accordance with its right to a fair market valuation herein, the Parties can determine a purchase price (the "**Fair Market Value**") by mutual agreement of the Parties in accordance with the methodology set forth below; **provided, however,** if the Parties cannot agree to a Fair Market Value determination based on the methodology set forth below, within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, 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 based on the valuation methodology set forth below. 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 will 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. If the Parties cannot agree upon the selection of an appraiser, each Party will select an appraiser, and the two (2) selected appraisers will in turn select an appraiser for the valuation.
  - (1) Fair Market Value shall be determined based upon the value of the System(s) as determined by a third-party appraiser, provided however, that if the appraised Fair Market Value for the System(s) is less than the amount necessary to discharge any debt secured by the System(s), then the Fair Market Value shall be the amount necessary to discharge such debt.

- iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to a System to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of a System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 20(d), Seller will have no further liabilities or obligations hereunder for the System.

15. **Indemnification and Limitations of Liability.**

- a. **General.** To the extent permitted by law, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective Council, elected and appointed officials, directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (i) any Claim (as defined in Section 15(b) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (ii) 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 will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances (defined below) or other environmental contamination, such matters being addressed exclusively by Section 15(c). Seller acknowledges that it is aware that Purchaser, as a municipal corporation, is unable under Michigan's Constitution to lend its credit and thus its ability to indemnify Seller is limited.
- 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 may settle any Claim covered by this Section 15(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 has no liability under this Section 15(b) for any Claim for which such notice is not provided if the failure to give notice materially prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
  - i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
  - ii. **Purchaser Indemnity.** 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 or otherwise caused by Seller or any of its contractors, agents or employees.
  - iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous**

**Substance**” means any chemical, waste or other substance (1) 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, (2) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (3) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (4) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (5) for which remediation or cleanup is required by any Governmental Authority.

**d. Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 11(b)(iii) shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(d)(i).
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 15(d)(i), Seller’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 15(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

- e. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

**16. Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller’s rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such 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 may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller’s performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **Definition.** For purposes of this Agreement, “Change in Law” means (1) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (2) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (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 (3) a change in any utility rate schedule or tariff approved by any Governmental Authority.
- d. **Change in Law on Utility Treatment.** If the Change in Law occurs that classifies Seller as a utility thereby making this Agreement or supply arrangement unlawful or impossible, the Parties shall first attempt to amend or restate this Agreement or arrangement to preserve the economic interests of the Parties in compliance with the Change in Law within sixty (60) days; if the Parties are unable to agree on an amendment to this Agreement within that would cause Seller to no longer be classified as a utility and/or bring this Agreement or supply arrangement in compliance with applicable laws, rules and regulations, Purchaser shall have an option to purchase all the Systems at the Fair Market Value of the Systems, which shall be determined in accordance with 14(b)(ii). If an agreement on a sale of the



System(s) cannot be reached, Seller will remove all property from the Purchaser's sites at their own expense.

17. **Assignment and Financing.**

a. **Assignment.**

i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), 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 may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller after the Commercial Operation Date has occurred for all Systems as long as the proposed assignee has the financial capability and experience necessary to operate and maintain the System(s) and who is otherwise qualified to do business with the Purchaser.

ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i):

1. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument and the assignee is otherwise qualified to do business with the Purchaser. For purposes of this Section, an assignee must have an Investment Grade (defined below) credit rating at the time of the assignment.

A. Seller may, by providing prior notice to Purchaser accompanied by supporting documentation that the assignee is of similar financial position of Seller, assign, mortgage, pledge or otherwise directly or indirectly assign its interest in this Agreement to any entity that is not Investment Grade but is a parent, a subsidiary, or an affiliate of a Publicly Traded company (defined below).

2. Purchaser may, by providing prior notice to Seller, assign this Agreement:

A. to an affiliate of Purchaser, including a municipal utility if the City of Ann Arbor creates such a utility, or a permitted purchaser of the Premises; provided, that, (i) Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness, and (ii) such assignment in no way impairs Seller from selling or supplying power under this Agreement, or from accessing the Systems and exercising its rights under the License; and

B. to an assignee that has an Investment Grade credit rating at the time of the assignment.

For the purposes of this Agreement,

C. "**Investment Grade**" means a rating of "BBB-" or better by S&P (or its equivalent under any successor rating category of S&P), a rating of "Baa3" or better by Moody's (or its equivalent under any successor rating category of Moody's) and a rating of "BBB-" or better by Fitch (or its equivalent under any successor rating category of Fitch).

D. "**Publicly Traded**" means the assignee or its parent corporation is traded on NYSE or NASDAQ.

iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller, unless such changes would result in an entity not qualified to do business with the Purchaser from assuming this Agreement.

b. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the construction, installation, ownership, use, operation, maintenance, and repair of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any

amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

c. **Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

18. **Goodwill and Publicity.** Seller and Purchaser agree not to make any press releases or official public announcements concerning this Agreement (except for filings or other statements or releases as may be required by applicable law or regulations (including SEC regulations), without making best efforts to provide the other Party with reasonable notice in advance, and shall in good faith work to reasonably accommodate such Party's concerns). Purchaser agrees not use any name, trade name, service mark or trademark of the Seller in any promotional or advertising material without the prior written consent of the Seller.

19. **General Provisions.**

a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) 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 will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States Dollars.

b. **Choice of Law, Jurisdiction and Venue.** The law of the state where the System(s) is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any controversy or claim regarding this Agreement, shall be brought in the Washtenaw County Circuit Court located in Ann Arbor, Michigan or in the United States District Court for the Eastern District of Michigan, and the Parties agree not to contest jurisdiction or venue in such courts.

c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be 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 must 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.

If to the Seller:

If to the Purchaser:

Enerlogics Networks, Inc. 7935 Cliffview Drive Youngstown OH 44514	City Attorney's Office City of Ann Arbor 301 E. Huron Ann Arbor, MI 48104
<i>Attn: Scott Ameduri Member</i>	<i>Attn: Atleen Kaur City Attorney</i>

d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.

e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.

f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

- g. Non-Dedication of Facilities.** Neither Party may 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 may 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. Purchaser and Seller agree that the intent of this Agreement is to allow Purchaser to exercise its rights to self-supply under MCL 460.10a(4), and that use of the utility's transmission and distribution system is not necessary for the Purchaser to receive electricity from the System. If a Party is reasonably likely to become subject to regulation as a public utility in a way that affects this Agreement, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that neither Party becomes subject to any such regulation. If the Parties are unable to agree upon such restructuring, either Party may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination, except that Purchaser may exercise its option to purchase one or more of the Systems in such an event, and if it chooses not to do so and Seller shall remove the System(s) in accordance with Section 9 of this Agreement.
- h. 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 shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may 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 may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. 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 provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. 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 to treatment consistent with that of a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. 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 the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Conflicting Terms.** This Agreement includes all the terms and conditions of this Agreement and all Exhibits attached hereto. The provisions of these documents shall, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. In the event of a conflict among the Agreement documents, the following order of precedence will apply, unless and only to the extent expressly provided to the contrary elsewhere: (i) amendments; (ii) Exhibits and (iii) the other terms and conditions of this Agreement.
- n. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect.

End of Exhibit 3

**Exhibit 4**  
**Performance Guaranty**  
**(if selected on Exhibit 1)**

In consideration for Purchaser's entering into the Solar Power Purchase Agreement between Enerlogics Networks, Inc. ("Seller") and Purchaser related to the System at the Premises (the "PPA"), this Performance Guaranty (this "**Guaranty**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Guarantor below (the "**Effective Date**").

Purchaser:		Seller:	
Name and Address	City of Ann Arbor 301 E Huron St Ann Arbor, MI 48104 Attention: Atleen Kaur, City Attorney	Name and Address	Enerlogics Networks, Inc. 7935 Cliffview Drive Youngstown, OH 44514 Attention: Scott Ameduri
Phone	(734) 794-6000	Phone	(216) 362-3000 x303
Fax	None	Fax	None
E-mail	sustainability@a2gov.org	E-mail	<a href="mailto:sameduri@enerlogics.com">sameduri@enerlogics.com</a>
Project Name	Ann Arbor City Ground Mount and Rooftop Solar		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA; except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the term of the PPA the System will generate not less than 85(%) of the projected generation of the System as set forth in "**CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION**" specified in Exhibits 2A through 2G; provided that the values are subject to downward adjustment for weather conditions (such adjusted figure, the "**Guaranteed kWh**").
  - A. Guarantor will use local weather data to determine the System's Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) satellite data provided by a third-party vendor of Seller; or (ii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the "**Actual kWh**") is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(D)), in each case with respect to the affected Contract Year.
  - B. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.
  - C. "**Performance Guarantee Payment Rate**" means the dollar value per kWh set forth in as the "PPA Rate per kWh Net of Prepayment" specified in the "**CONTRACT PRICE AND PROJECTED ANNUAL ENERGY PRODUCTION**" Table of Exhibits 2A through 2G
  
2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):
  - A. A Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the utility; (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the utility or grid operator.

B. Purchaser's failure to perform, or breach of, Purchaser's obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser's sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(d) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to "Agreement" were to this Guaranty and any reference to "Parties" were to the Parties to this Guaranty.

**Guarantor Enerlogics Networks, Inc.**

**Purchaser City of Ann Arbor**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Signature \_\_\_\_\_

Name: Atleen Kaur

Title: City Attorney

Date: \_\_\_\_\_