

Solar Services Agreement

This Solar Services Agreement (this “**Agreement**”) is made this ___ day of _____, 2015 (the “**Effective Date**”), by and between **Tucson Unified School District** (“**Purchaser**”) and **Natural Power and Energy, LLC** (“**Seller**”). Seller and Purchaser are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

Recitals

WHEREAS, the Parties desire to agree to terms for the financing, design, installation, operation and maintenance of approximately seven individual solar photovoltaic panel electrical generating systems at five individual school sites that are more particularly described in **Exhibit 2** attached hereto (collectively, the “**System**”) for installation on real property located on Purchaser’s premises on or near Purchaser’s facilities generally described in **Exhibit 2** and more particularly described in the legal description of the Premises as attached hereto at **Exhibit 3(a)**;

WHEREAS, this Agreement and the Exhibits attached hereto are intended to conform to Arizona law regarding procurement practices and guaranteed energy savings contracts; and

WHEREAS, this Agreement and the Exhibits attached hereto set forth the terms and conditions of the finance, design, installation, operation and maintenance of the System.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants contained herein, on the terms and subject to the conditions set forth herein and intending to be legally bound thereby, the Parties to this Agreement agree as follows:

Agreement

1. Definitions.

a. “After-Tax Basis” means, with respect to a payment received or deemed to have been received by any person, the amount of such payment (the “**Base Payment**”) supplemented by a further payment (the “**Additional Payment**”) to such person so that the sum of the Base Payment and the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the Base Payment. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Arizona and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

b. “Change in Law” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii)

the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any governmental authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

c. **“Commercial Operation Date”** means the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing Electricity to the Delivery Point.

d. **“Confidential Information”** means confidential and/or proprietary business information pertaining to Purchaser, Seller, or the System, including but not limited to business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's or Seller's business.

e. **“Contract Price”** means the price of Electricity set forth in **Exhibit 1** to this Agreement.

f. **“Contract Year”** means each twelve-month period commencing on the Commercial Operation Date.

g. **“Default Event”** has the meaning given to it in **Section 14**.

h. **“Delivery Point”** means the delivery point on the Premises on Purchaser's side of the Utility meter where the System connects to the existing electrical system serving Purchaser's facilities, as designated in Purchaser's agreement with the Utility.

i. **“Electricity”** means electrical energy, measured in kilowatts and kilowatt-hours that (a) is produced by the System, (b) is delivered by Seller to Purchaser at the Delivery Point, and (c) conforms to applicable Utility and/or authoritative regulatory body standards.

j. **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides, nitrogen oxides, carbon monoxide and other pollutants; (2) any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits.

Green Tag Reporting Rights are the right of a Party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other Party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green•e8 products.

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

l. “Fair Market Value” of an asset or property means the price at which the asset or property would change hands between a willing buyer and a willing seller, on an arms-length basis, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

m. “Financing Parties” means any lender or third party to which Seller has pledged or assigned all or any part of its rights and interests in this Agreement and/or Seller’s rights to payment and/or a first security right in the System or in Seller’s other property located on the Premises.

n. “Force Majeure” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by commercially reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence).

o. “Governmental Authority” means any federal, state or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the Arizona Corporation Commission), or any arbitrator with authority to bind a Party at law.

p. “Hazardous Substance” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

q. “Insolation” means unobstructed access to sunlight.

r. “Easement” has the meaning given to it in **Section 10**.

s. “OSHA” means the Occupational Safety and Health Act.

t. “Payment Default” means a Default Event as described in **Section 14(a)(1)**.

u. “Premises” means the outlined areas indicated on **Exhibit 3(a)** of the Purchaser’s real property, upon which the System will be or is installed.

v. “REC Agreement” means, collectively or individually (as applicable) that certain Solar Renewable Energy Credit Purchase Agreements Grid Tied Photovoltaic System between Purchaser and the Utility.

w. “Renewable Energy Credit” or **“Renewable Energy Certificate”** (“REC”) means (i) the Environmental Attributes associated with the generation of power from the System and (ii) the REC reporting rights arising therefore or connected therewith. One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from the System.

x. “Scheduled Outage” means a twenty-four (24) hour day in which Purchaser has notified Seller of the need for the System to be “off-line” and not delivering Electricity.

y. “System Purchase Option” has the meaning given to it in **Section 10(k)**.

z. “Tax” and **“Taxes”** means any present or future tax (including but not limited to all sales and use taxes, privilege taxes, and any applicable real property or personal property taxes in respect of the System and including any taxes resulting from an increase in the assessed value of the Premises caused by the installation of the System), any levy, impost, duty, charge, assessment or fee of any nature (including but not limited to interest, penalties and additions thereto) that is imposed by any federal, state or local taxing authority on the generation, sale, delivery or consumption of Electricity or Seller’s services and operations in respect thereof, or any payments made

by Purchaser under this Agreement, but excluding taxes on the income of Seller. For the avoidance of doubt, Taxes includes Transaction Privilege Taxes.

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

bb. “Term” has the meaning given to it in **Section 4**.

cc. “Termination Payment” has the meaning given to it in **Section 14**.

dd. “Utility” means Trico Electric Cooperative, Inc. which is the local provider of electrical transmission and distribution services to the Purchaser in the absence of the System.

2. Obligation to Finance, Design, Develop and Operate the System. Subject to the terms and conditions of this Agreement, Seller shall be responsible for the financing, design, development, and operation of the System during the Term.

3. Purchase and Sale of Electricity.

a. Beginning on the date that any individual System is providing Electricity and continuing for the Term, Purchaser shall purchase and accept delivery from Seller at the Contract Price (as defined below) set forth in **Section 5** and **Exhibit 1** for all Electricity as and when delivered by the System, and Seller shall sell and deliver to Purchaser all Electricity generated by the System.

b. Purchaser shall pay Seller for all Electricity and all Environmental Attributes supplied by the System an amount equal to the price per kilowatt-hour specified in **Exhibit 1**, regardless of whether Purchaser uses such Electricity (the “**Contract Price**”).

c. If Purchaser interferes with Seller’s installation of the System for more than thirty (30) days, in the aggregate, from the date the Seller notifies Purchaser in writing of its readiness to begin installation of the System, then Purchaser shall pay to Seller for the loss of revenue an amount equal to (A) the product of (i) average daily projected Electricity for the month in which the interference took place, measured in kilowatt-hours, for the System in the first year of the System’s operation, as reasonably determined by Seller, (ii) the number of days the Purchaser interfered with Seller’s installation of the System, as reasonably determined by Seller, and (iii) price per kilowatt-hour specified in **Exhibit 1**, plus (B) Tax Credits, on an After-Tax Basis, that would have been available to Seller.

d. The Purchaser and Seller agree that Purchaser shall take title to all Electricity that the System generates upon completion of each individual system at Purchaser’s facilities and that the Electricity will be delivered to Purchaser at the Delivery Point. **Exhibit 2** depicts the Delivery Point.

e. Purchaser shall be responsible for arranging delivery of Electricity from the Delivery Point to Purchaser and for any installation and operation of the equipment on Purchaser's side of the Delivery Point necessary for acceptance and use of the Electricity. The Parties acknowledge that amendments to the terms and conditions of this Agreement may be necessary from time to time to account for rule changes made by the Utility or by its independent system operators, or their successors, which could not be anticipated at the date of the execution of this Agreement or which are beyond the control of the Parties, and the Parties agree to make commercially reasonable amendments to this Agreement, as are required to comply with such rule changes.

f. If Purchaser fails to accept all or any amount of the Electricity for any reason other than an event of Force Majeure, Purchaser shall pay to Seller for the loss of revenue an amount equal to the product of the applicable Contract Price for such unaccepted Electricity, multiplied by the metered quantity of Electricity delivered to, but not accepted by Purchaser at the Delivery Point. In the event of a Force Majeure affecting Purchaser's ability to accept all or any amount of the Electricity generated by the System, then Purchaser shall reimburse Seller for the unaccepted Electricity from the proceeds from any insurance policies required to be maintained by Purchaser hereunder.

g. After the System is mechanically complete and capable of providing Electricity to the Delivery Point and, thereby, commences commercial operation, if, when there exists no breach or default by Seller under this Agreement, (i) Seller is prevented from being able to deliver Electricity to Purchaser or any other person (such that no metering of such Electricity has occurred) or (ii) the amount of Electricity produced by the System is decreased, in either case due to Purchaser's negligence or Purchaser's breach of or failure to perform its obligations under this Agreement, including its obligations set forth in Section 10(h) of this Agreement, then Purchaser shall pay to Seller for the loss of revenue an amount equal to the product of (i) the applicable Contract Price for the estimated Electricity, and (ii) as reasonably determined by Seller, the amount of Electricity in kilowatt-hours that would have been delivered absent Purchaser's negligence, breach or failure to perform.

4. Term and Termination.

a. **Term.** The term of this Agreement shall commence on the Effective Date and continue for all Systems until the date that is **Twenty (20) years** after the last individual System reaches its Commercial Operation Date, or until Purchaser's payment upon exercise of the System Purchase Option is made, whichever first occurs, unless earlier terminated as provided for in this Agreement ("**Term**"). Seller shall deliver to Purchaser written notice that the System is mechanically complete and capable of providing Electricity to the Delivery Point, which shall include each individual System's size in kW DC, Estimated Annual Productivity updating Exhibits 1 and 2, and Commercial Operation Date. Upon request of Purchaser, Seller also shall deliver to Purchaser copies of certificates of completion or similar documentation from Seller's contractor evidencing installation of the System and a copy of the interconnection or similar agreement with the Utility. If either Party provides to the other Party written notice of its desire to renew the term of this Agreement at least twelve (12) months prior

to the end of the Term, the Term shall be extended for an additional five (5) years, subject to the Parties reaching agreement on mutually acceptable changes to this Agreement (including price terms) and approval of the Purchaser. The extension option in the previous sentence may be exercised for a total of one (1) additional five (5) year term, but in no event shall the term of the Agreement exceed 25 years. If this Agreement is terminated by Purchaser due to its inability to appropriate or otherwise make available funds adequate to fund its obligations under this Agreement in any fiscal year, then Purchaser agrees to enter into a separate Easement agreement, and sign a new memorandum of Easement and file it with the local Arizona land records office, whereby Purchaser would continue to grant to Seller the same Easement and access rights to the Premises as set forth in Section 10 herein so that Seller can continue to operate all of the Systems at the several sites and schools set forth herein for the remaining period of time that would have been the entire Term of this Agreement absent such termination (i.e., twenty (20) years after the Commercial Operation Date).

b. Early Termination by Seller. Seller shall have the right, but not the obligation, to terminate this Agreement prior to the expiration of the Term without any further liability of either Party to the other Party upon the occurrence of:

(1) An unstayed order of a court or administrative agency having the effect of subjecting the sales of Electricity to federal or state regulation of prices and/or service;

(2) Elimination or alteration of one or more Environmental Incentives or other Change in Law that results in a material adverse economic impact on Seller;

(3) An annual level of direct beam solar resource availability that is less than or equal to ninety percent (90%) of historical averages as measured by long-term weather data for a minimum of five (5) years collected at the Premises and/or other reliable calibrated and appropriate weather station representative of the Premises; or

(4) The termination of the Easement for the Premises prior to the end of the Term for any reason.

5. Billing and Payment.

a. Contract Price Billing. The Purchaser and Seller agree that Purchaser will take title to all electric energy that the System generates from the moment the System produces such energy and that such energy will be delivered to Purchaser at the Delivery Point and Purchaser shall purchase all such electric energy as and when produced by the System. The Contract Price paid by Purchaser on a monthly basis will be equal to an amount that is the initial \$/kWh rate provided on **Exhibit 1** multiplied by the number of kWh of Electricity generated during each month, as measured by the System meter. The \$/kWh rate will be subject to an annual escalation of as shown on **Exhibit 1** at each anniversary of the Commercial Operation Date. Purchaser agrees that it will make

monthly payments to Seller at the Contract Price calculated as dollars per the applicable \$/kWh rate. The Purchaser agrees that the Contract Price is a fair and reasonable price in light of the benefit that the Purchaser receives under this Agreement.

b. 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 rates applicable to, and charges incurred by, Purchaser under this Agreement, (iii) all payments to be made to Seller by Purchaser in connection with Purchaser's obligations set forth in Section 5(d) below and (iv) the total amount due from Purchaser. For the avoidance of doubt, Purchaser shall be required to pay for all Electricity produced by any and all individual Systems during the period of time between the first and for each Commercial Operation Date of such individual Systems and the achievement of Commercial Operation Dates of the final individual System and for twenty (20) years after such latter Commercial Operation Date.

c. Utility Invoices. Purchaser shall authorize the Utility to send to Seller duplicates of any bills sent to Purchaser. If Utility does not permit duplicate bills to be sent to Seller, Purchaser shall, promptly upon receipt of each bill, make a photocopy of each bill and mail the copy to Seller. Purchaser shall pay all charges assessed by the Utility attributable to Purchaser's facilities located on the Premises.

d. Taxes. In addition to the Contract Price payable hereunder, Purchaser shall be solely responsible for paying all Taxes under this Agreement, including but not limited to any Taxes which Seller is required to collect. To the extent Purchaser is responsible for Taxes and in the event such Taxes are assessed directly against Seller, Purchaser shall reimburse Seller for all such amounts due. Seller shall be entitled to all Tax Credits associated with and resulting from the ownership, development and installation of the System or the production, sale, purchase or use of the Electricity. Seller shall also be entitled to all direct third party subsidies for the generation of Electricity (excluding as may be set forth in Section 7). For the avoidance of doubt, Seller shall remit all Taxes collected by Seller pursuant to this Section 5(d) to the appropriate Governmental Authority. Seller is solely responsible for any taxes on the income of Seller. On the Effective Date, the Parties acknowledge that to the best of their knowledge there are no taxes on real or personal property attributed to the System; however, in the event that such taxes become assessed, then Purchaser shall pay all such taxes or else reimburse Seller for such taxes. Upon request of Seller, Purchaser will provide a copy of any exemption certificate or similar documentation to support any applicable tax exemption.

6. Payment Terms. All amounts due under this Agreement shall be due and payable net thirty (30) days from Purchaser's receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of the lesser of (i) twelve percent (12%) and (ii) the maximum rate permitted to be charged under applicable law.

7. Environmental Attributes and Environmental Incentives.

a. As between Purchaser and Seller, Purchaser shall own, and the exclusive rights to claim the Environmental Incentives and Environmental Attributes.

b. As between Purchaser and Seller, the Contract Price paid by Purchaser shall entitle Purchaser to all Environmental Attributes associated with the Electricity generated by the System. Accordingly: (i) Purchaser shall be responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Electricity and the delivery thereof to the Delivery Point; and (ii) Purchaser is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

c. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, nothing in this Section 7 shall be deemed to require Purchaser to sell electricity to the Utility unless enough electricity is generated that Purchaser's needs are met and excess electricity exists.

d. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, each party shall submit to the other party for approval any press releases regarding the use of solar or renewable energy and shall not submit for publication any such releases without the prior written consent of the other party. Each party shall not unreasonably withhold such consent, and any such party's review and approval shall be made in a timely manner to permit the timely publication of any such release.

e. Notwithstanding the foregoing, on or about the Effective Date, Purchaser shall enter into the REC Agreement with the Utility, upon terms acceptable to Seller, and Purchaser shall fully comply with all terms and conditions of the REC Agreement during the term hereof and thereof and Purchaser shall not take any action or fail to take any action that would result in the termination of the REC Agreement. Purchaser hereby assigns to Seller all right, title and interest in and to all payments by Utility to Purchaser under the REC Agreement, and Purchaser shall take all action necessary to ensure that all such payments are promptly paid directly to Seller. Upon any termination of the REC Agreement arising from a breach of the contractual obligations or event of default of Purchaser, Purchaser shall within ten (10) business days pay Seller the then-present value of all RECs expected to be produced by the System from the effective date of termination of the REC Agreement through the end of the term of this Agreement at a price equal to the applicable price(s) set forth in the REC Agreement. Upon any termination of the REC Agreement arising from a breach of the contractual obligations or event of default of the Utility, Purchaser shall within ten (10) business days notify Seller and Purchaser shall pursue against the Utility all remedies available at law or in equity.

Seller agrees to be responsible for any deficiency in supply of the Contract Quantity as set forth in Section 26 of the REC Agreement to the extent such deficiency is directly caused by Seller.

8. Conditions to Seller's Obligations.

Seller's obligations under this Agreement are conditioned on its ability to complete the following conditions to Seller's reasonable satisfaction:

- i. Completion of a physical inspection of the Premises including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Premises for the System;
- ii. Approval of (i) this Agreement and (ii) the construction agreement (if any) for the System by Seller's Financing Parties.
- iii. Confirmation that Seller will obtain, or have rights to, all applicable Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits; and
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system.
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.
- vii. Seller and its subcontractors shall comply with all Federal, State, Local and School District laws and regulations, including, but not limited to, the requirement for all of Seller's contractors, subcontractors and vendors to have the requisite fingerprint cards.

9. Seller's Rights and Obligations.

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

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

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

b. Standard System Repair and Maintenance. Seller shall finance, design, develop, operate and install the System on the Premises. During the Term, Seller shall cause the operation and performance of all routine and emergency repairs to and maintenance of the System at Seller's sole cost and expense, except for any repairs or

maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or of any Easement of the Premises related to the System. Seller shall not be responsible for any work done by third parties on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller's or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Premises to make standard repairs.

c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions of the Premises arising after the Commercial Operation Date, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.

d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of Electricity from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of Electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.

f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform Seller's obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall ensure all work performed under this agreement shall be designed by architects and engineers properly registered within the State of Arizona and constructed by contractors and subcontractors holding valid Arizona contractor's licenses.

g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Premises free and clear of any liens related to such charges. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable

assurances of payment that either remove such lien from title to the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Premises.

h. No Warranty. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

i. ROOF MOUNTED EQUIPMENT. Seller shall not mount, attached or install any equipment to include solar panels on the roof of any District facility.

j. RESERVED.

k. Guaranteed Energy Production.

(1) Commencing on the Commercial Operation Date of the System, Seller warrants that the System will have a weather-adjusted annual electricity output of 90% of the Estimated Annual Productivity identified in Exhibit 1 based on a three-year rolling average. Weather-adjustment means the irradiance measured by the System's weather stations relative to the predicted annual irradiance of a system by the US Department of Energy's NREL Version 1 PVWatts.

(2) Commencing on the Commercial Operation Date of the System, Seller agrees to pay to the Purchaser the difference between the Utility reimbursement for excess energy produced and the contracted price paid to Seller established by this Agreement if System weather-adjusted annual electricity output exceeds 115% of the final Annual Productivity identified in Exhibit 1. For this section the annual calculations of production will be adjusted to match the annual cycle used by the Utility for calculating electrical annual production.

l. Payment and Performance Bonds. Seller shall require of all contractors working on the project, and shall provide to Purchaser copies of, payment and performance bonds covering the cost of all construction work performed on the Premises in accordance with the provisions of A.R.S. § 34-222.

m. FINA Compliance. Seller warrants, for itself, its contractors and subcontractors of every tier, compliance with the Federal Immigration and National Act and all other federal and state immigration laws and regulations related to the immigration status of its employees. Seller shall obtain statements from its contractors and subcontractors of every tier certifying compliance and shall furnish the statements to Purchaser upon request. These warranties shall remain in effect through the Term of

this Agreement, and any contractors and their subcontractors of every tier shall also maintain Employment Eligibility Verification forms (Form I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Agreement.

n. **OSHA Compliance.** Seller shall require that all employees, contractors, subcontractors, and any agents and other representative of Seller adhere to all applicable OSHA requirements and safety laws or codes in the performance of this Agreement.

10. Purchaser Rights and Obligations.

a. **Premises Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors, successors, and assigns an irrevocable, non-exclusive easement running with the Premises (the "**Easement**") for access to, on, over, under and across the entire Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights as set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at Purchaser's facilities on the Premises and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Premises except in situations where there is imminent risk of damage to persons or property. The term of the Easement shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**Easement Term**"). During the Easement Term, Purchaser shall ensure that Seller's rights under the Easement and Seller's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. With respect to any third party, which has any right to or encumbrance on the Premises which could conflict or interfere with Seller's rights under the Easement, Purchaser shall, upon Seller's request, obtain a consent from such third party in form and substance reasonably acceptable to Seller which removes such potential conflict or interference. The grant of the Easement shall survive termination of this Agreement by either Party. Purchaser agrees that Seller may record a memorandum of Easement in substantially the same form attached hereto as **Exhibit 3** in the land records respecting the Easement. Purchaser hereby agrees to execute a commercially reasonable form of separate easement agreement as requested by Seller or the Financing Parties.

b. **OSHA Compliance.** Purchaser shall ensure that all OSHA requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.

c. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises in good condition and repair. Purchaser will ensure that its facilities on the Premises remain interconnected to the Utility grid at all times and will not permit cessation of electric service to Purchaser's facilities on the Premises from the

Utility without the consent of Seller, unless electric service is disrupted by the unilateral action of Utility in accordance with the terms of its interconnection agreement with Purchaser. Purchaser is fully responsible for the maintenance and repair of its electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it becomes aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

d. No Alteration of Premises. Purchaser shall not make any alterations or repairs to the Premises that may adversely affect the operation and maintenance of the System. Purchaser shall notify and obtain the written consent of Seller before making any alterations or repairs to the System, except that if Purchaser reasonably determines that the System requires an emergency repair, Purchaser shall notify Seller by telephone or electronic mail and Seller's verbal consent shall satisfy Purchaser's advance notice and consent obligation to make or cause to be made the emergency repair. If Purchaser cannot reasonably determine whether a contemplated alteration or repair to the Premises may cause an adverse effect, including diminution of Insolation of the System resulting from proposed construction on or at the Premises, Purchaser shall notify Seller and provide Seller the opportunity to advise Purchaser and any third party in making such alterations or repairs and undertaking such construction in a manner that avoids damage and diminution of Insolation to the System; but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform Purchaser's proposed alterations or repairs, Seller or its contractors shall perform such work and any replacement of the System and Purchaser shall be responsible for the cost of such work and for Seller's lost revenues that are a result of any reduced output from the System during such alterations and repairs, including but not limited to, amounts that would have been otherwise payable under this Agreement during the ordinary course of the System's operation, plus Tax Credits, on an After-Tax Basis, that would have been available to Seller. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

e. Outages. Purchaser shall be permitted two Scheduled Outages per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for Electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of Electricity that would have been delivered to Purchaser during such additional Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with **Section 5**, plus Tax Credits, on an After-Tax Basis, that would have been available to Seller. Purchaser may purchase Electricity from any source during any such Scheduled Outage.

f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and Purchaser shall promptly cause the same to be discharged and released of record without cost to Seller. Purchaser shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. In accordance with the terms of **Section 18**, Seller shall indemnify Purchaser for any actual loss, expense and liability arising from any pledge, lien, materialman's lien, charge, security interest, encumbrance or other claim that may be placed on Purchaser's property by any contractor or subcontractor utilized by Seller.

g. **Security.** Purchaser shall be responsible for maintaining the physical security of the Premises in accordance with Purchaser's customary practices. Purchaser shall have no rights to the proceeds of any insurance Seller purchases to insure its revenue stream, and shall further have no recourse against Seller for its failure to provide any or all System power to Purchaser prior to the completion of all repairs associated with an insurable and/or force majeure event except as provided by the energy production guarantee in Section 9(k).

h. **Insolation.** Purchaser understands that Insolation of the System is essential to Seller's performance of its obligations and that such Insolation is a material term and condition of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. For the avoidance of doubt, Purchaser agrees that it will not cause, permit or otherwise acquiesce to a third party's construction and erection of any tower, pole or other equipment that would interfere with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. Purchaser and Seller are each aware, however, that under Arizona law, there is no right to unobstructed sunlight and, therefore, Purchaser shall not be responsible for any diminution of Insolation as a result of the construction activities of third parties, so long as (i) Purchaser is not a party to such activity, (ii) Purchaser has provided Seller notice of such proposed activities (to the extent Purchaser knows of such activities in advance of their occurrence), and (iii) Purchaser has used its best efforts to provide Seller an opportunity to advise the third party on such activities to avoid any diminution of the System's Insolation.

i. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions

requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

j. Metering. Electricity delivered to the Purchaser's facilities and to the Utility facilities shall be measured by a revenue-grade meter monitoring system installed and maintained by Seller as part of the System. If revenue-grade meter data is unexpectedly unavailable, and the System was known to be operational during such meter downtime, Parties will either use inverter metered data or otherwise calculate unmetered production based on actual irradiance data.

k. Option to Purchase.

(1) So long as Purchaser is not in default under this Agreement, Purchaser may purchase the System (the "**System Purchase Option**") upon (a) the sixth (6th) anniversary of the Commercial Operation Date at a purchase price equal to the Fair Market Value of the System or \$2,918,727, whichever is greater, (b) the tenth (10th) anniversary of the Commercial Operation Date at a purchase price equal to the Fair Market Value of the System or \$2,271,531, whichever is greater, (c) the fifteenth (15th) anniversary of the Commercial Operation Date at a purchase price equal to the Fair Market Value of the System or \$1,637,030, whichever is greater, or (d) the expiration of the Term at a purchase price equal to the Fair Market Value of the System or \$1,002,517, whichever is greater. In order to exercise the System Purchase Option, Purchaser must provide Seller written notice of such election at least ninety (90) days prior to the date set forth above. Upon Seller's receipt of such written notice, the Parties shall execute all documents necessary to cause all right, title and interest in and to the System to be transferred to Purchaser "as-is, where-is, with all faults" on the date on which the Term expires; provided, however, Seller shall have no obligation to transfer title to the System to Purchaser until Seller receives all amounts due and owing to Seller by Purchaser. For the avoidance of doubt, upon Seller's transfer of title to the System pursuant to this Section 10(k), Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further obligations or liabilities hereunder.

(2) It is the express intent of the Parties that this Agreement shall be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986 as amended and that the Seller shall be treated as the owner of the System for income tax purposes. To the extent that any term or provision of this Agreement shall render this Agreement as something other than a "service contract" under such Internal Revenue Code Section or shall cause the Seller not to be treated as the owner of the System for income tax purposes, then such term or provision shall be deemed to be amended and modified to cause this Agreement to be a service contract under such Internal Revenue Code Section and to cause the Seller to be treated as the owner of the System for income tax

purposes, with such amendment to carry out as closely as otherwise practicable the other intents and purposes of this Agreement.

(3) The Parties shall agree upon and appoint a qualified independent appraiser with the qualifications described herein who shall determine the Fair Market Value. In the event that the Parties cannot agree upon such appraiser, Seller shall designate a qualified independent appraiser meeting the criteria described above, and Purchaser shall designate a qualified independent appraiser meeting the criteria described above. Such appraisers shall determine the Fair Market Value. In the event that such appraisers are unable to agree upon the Fair Market Value, such appraisers shall select a third qualified independent appraiser meeting the criteria described above, who shall determine the Fair Market Value. The valuation made by the appraiser(s) shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

l. Parking Canopy and Cleaning. Purchaser will operate and maintain at its cost any parking canopy lighting that is installed by Seller, including all electricity consumed by such parking canopy lighting. Purchaser will be responsible for maintaining the paint coat on the parking canopy structures to Purchaser's standards, except if any such damage to the paint coat is caused by Seller. Upon reasonable prior written notice from Seller, Purchaser will provide reasonable access to tap into Purchaser's water line to enable semi-annual cleanings of the System, and Purchaser shall pay for all such water utility costs.

m. Financial Information. If requested by Seller, Purchaser shall deliver within one hundred twenty (120) days following the end of each fiscal year, a copy of Purchaser's annual report containing audited consolidated financial statements with footnotes for such fiscal year. Financial statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles consistently applied; provided, however, that if any such financial statements are not available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Purchaser diligently pursues the preparation, certification and delivery of the statements.

n. Communications Line. Purchaser shall provide a communication line and shall be responsible for obtaining, at Purchaser's expense, the ongoing communication service necessary for the operation of the Supervisory Control and Data Acquisition System, provided that Seller shall be responsible for the installation of the Supervisory Control and Data Acquisition System (including the establishment of communications connectivity).

o. Deed and Surveys. Purchaser shall provide a copy of the Premises' deed and currently available site plans to Seller within fourteen (14) days of Agreement execution, and otherwise promptly provide any and all other information requested by Seller related to the Premises or real property matters.

11. Change in Law. If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Purchaser and Seller shall submit their dispute to the dispute resolution procedures provided in **Section 23(b)** for determination of such amendments.

12. Relocation of System.

a. Any time after the fifth (5th) anniversary of the date the System commenced commercial operation, if Purchaser ceases to conduct business operations at and/or vacates the Premises at the Premises prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises for relocation of the System located within the same Utility district as the Premises or in a location with similar Utility rates and providing similar Insolation of the System, as determined by Seller acting reasonably. Purchaser shall provide at least sixty (60) days written notice prior to the date that it wants to commence the relocation of the System.

b. In connection with such relocation, Purchaser and Seller shall execute amendments to this Agreement, as appropriate, that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) Easement, which will be amended to grant rights in the real property where the System is relocated; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility.

c. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Premises and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refileing the security interests of Seller's Financing Parties in the System. Purchaser shall also be responsible for Seller's losses resulting from the relocation, including but not limited to, amounts that would have been otherwise payable under this Agreement during the ordinary course of the System's operation, plus Tax Credits, on an After-Tax Basis, that would have been available to Seller.

d. Seller shall remove the System from the vacated Premises prior to the termination of Purchaser's ownership, lease or other rights to use such Premises. Seller will not be required to restore the Premises to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear.

e. If the substitute facility has inferior Insolation as compared to the original Premises, Seller shall have the right to make an adjustment to the Contract Price in **Exhibit 1** such that Purchaser's payments to Seller are the same as if the System were located originally. If Purchaser is unable to provide such substitute facility and to relocate the System as provided herein, any early termination will be treated as a default by Purchaser and the System will be removed by Seller as described in **Section 13**.

13. Removal of System at Expiration.

a. Unless Purchaser exercises its System Purchase Option as set forth in **Section 10(k)**, upon the expiration or earlier termination of this Agreement, Seller shall, at its own expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but not later than ninety (90) days after the expiration of the Term. The Premises shall be returned to its original condition, except for System mounting pads or other support structures, which may be left in place, and ordinary wear and tear. Seller shall leave the Premises in neat and clean order. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

b. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse or other locations of Purchaser's choosing and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear). On the ninety-first day (91), title to all equipment will become vested to the Purchaser.

14. Default, Remedies and Damages.

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

(1) Failure of a Party to pay any amount due and payable under this Agreement after it is due;

(2) Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the non-defaulting Party (the "**Non-Defaulting Party**") identifying the alleged Default Event and demanding the Defaulting Party's cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse affect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

(3) If any representation or warranty of a Party proves at any time to have been incorrect in any material respect as of the Effective Date and is material to the transactions contemplated hereby, and if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

(4) Purchaser loses its rights to occupy and enjoy the Premises;

(5) A Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect;

(6) Purchaser unreasonably prevents Seller from installing the System or Purchaser otherwise fails to perform in a way that prevents the delivery of Electricity from the System. (Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement in accordance with **Section 3.**); or

b. Remedies.

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

(2) **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

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

A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement as a result of Purchaser's Default Event, the Termination Payment to Seller shall be equal to the sum of (i) the reasonably expected cost of Electricity at the Contract Price for the

reasonably expected production of the System for the remainder of the Term, (ii) Tax Credits, on an After-Tax Basis, that would have been available to Seller, (iii) costs to remove the System and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Termination Payment shall not be less than zero.

B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of Electricity from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Term; (ii) all costs reasonably incurred by Purchaser in reconverting its electric supply to service from the Utility; (iii) any removal costs incurred by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this **Section 14(b)(3)**, then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System.

(4) **Mitigation of Damages**. The Non-Defaulting Party shall take commercially reasonable efforts to mitigate its damages as the result of a Default Event.

15. Representations and Warranties.

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

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

(2) Such Party, to its knowledge, 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.

(3) Pursuant to A.R.S. §35-391.06 and §35-393.96, any Party and its subcontractors do not have, and shall not have a scrutinized business operation in either Sudan or Iran during the Term of this Agreement.

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

(1) Easement. Purchaser owns fee title to the Premises and has the full right, power and authority to grant the Easement contained in **Section 10(a)** and to enter into this Agreement. Such grant of the Easement 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.

(2) Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a Party or by which Purchaser or the Premises is bound.

(3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the physical configuration of Purchaser's facilities at the Premises and the Premises, Purchaser's planned use of the Premises, and Purchaser's estimated Electricity requirements, is accurate in all material respects.

(4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

(5) Other Facts and Circumstances. To Purchaser's best knowledge, there are no facts, circumstances, or other matters that may interfere with or delay the construction and installation of the System, except as have been disclosed in writing to Seller.

16. System Damage and Insurance.

a. Insurance Coverage-Purchaser. At all times during the Term, Purchaser shall maintain reasonable levels of commercial general, property, liability, employers and workers compensation insurance as determined by the Purchaser in the exercise of its sole discretion. Upon request, Purchaser shall provide to Seller a certificate evidencing such insurance coverage and naming Seller as an additional insured.

b. Insurance Coverage-Seller. At all times during the Term, Seller shall maintain (i) liability insurance with coverage of at least \$2,000,000 per occurrence and

\$5,000,000 annual aggregate, (ii) employer's liability insurance with coverage of at least \$1,000,000 and (iii) worker's compensation insurance as required by law.

c. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the Seller agrees to give the Purchaser thirty (30) days written notice before the insurance is cancelled, terminated or materially altered in a manner that may affect this Agreement, (ii) be written on an occurrence or claims-made basis, (iii) with respect to any property insurance policies, name Seller as loss payee, where appropriate, thereunder, (iv) with respect to the liability insurance policies, include the Purchaser as an additional insured as its interest may appear, and (v) be maintained with companies either rated no less than A- as to "Policy Holder's Rating" listed in the then current edition of Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

d. Certificates. Within thirty (30) days after execution of this Agreement and upon the other Party's request and annually thereafter, each Party shall deliver the other Party certificates of insurance evidencing the above required coverage.

e. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

17. Ownership.

a. Ownership of System. Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, any of Purchaser's facilities. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all Parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises is located and Seller shall provide such disclaimer to Purchaser to file. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner.

18. Indemnification and Limitations of Liability.

a. General. Each Party (the "**Indemnifying Party**"), to the extent allowed by law, shall defend, indemnify and hold harmless the other Party and the directors,

officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in **Section 15** and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This **Section 18(a)** however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by **Section 18(c)**.

b. Notice and Participation in Third Party Claim. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this **Section 18(b)** unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this **Section 18(b)** for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. Environmental Indemnification. Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, released or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any deposit, spill or release of any Hazardous Substance on or about the Premises or the Premises generally. If Seller or its contractors or subcontractors deposit, spill, release, or otherwise cause any Hazardous Substance to be on, above, below or near the Premises, Seller shall immediately call the local, county and/or state

hazardous materials team, as appropriate; and assist to the fullest extent possible with the direction of such team. Seller shall, in addition, be liable for the full cost of the clean up of the Hazardous Materials, and for returning the Premises to the same condition as it was prior to the clean-up, to the extent reasonably possible.

d. Limitations on Liability.

i. No Consequential Damages. Neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or nonperformance hereunder even if advised of such. Notwithstanding the foregoing, in no event will the Termination Payment be considered an indirect or consequential damage.

ii. Actual Damages. Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the lesser of (A) the total payments made by Purchaser under this Agreement as of the date that the events that first gave rise to such liability occurred; and (B) the total of the prior twelve (12) monthly payments preceding the date that the events that first gave rise to such liability occurred. The provisions of this **Section 18(d)(ii)** shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise except those obligations to reimburse the District under paragraphs 9.k(1) (production guarantee) and 9.k(2) (overproduction). Any action against Seller must be brought within one (1) year after the cause of action accrues.

19. Force Majeure.

a. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses commercially reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Seller shall not be liable for any damage to the System, the Premises or Purchaser's facilities located on the Premises resulting from a Force Majeure event. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

b. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused or extended by a Force Majeure event.

20. Assignment and Financing.

a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller, and Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments, but only upon assumption of Seller's obligations hereunder by the assignee. Purchaser's consent to any other assignment shall not be withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from Financing Parties in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign or pledge this Agreement and Seller's rights contained herein to the Financing Parties as collateral, and in connection with any such assignment or pledge, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

21. [Removed]

22. Goodwill and Publicity. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release regarding or public announcement or the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior

written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

23. General Provisions.

a. Choice of Law. Arizona law shall govern this Agreement without giving effect to conflict of laws principles.

b. Attorneys' Fees. The prevailing Party in any dispute arising out of this Agreement shall be entitled to recovery of reasonable attorneys' fees and costs.

c. Notices. All notices under this Agreement shall be in writing and shall be by personal delivery, overnight courier, certified, or registered mail, return receipt requested, and deemed received upon personal delivery and acknowledgement thereof. Notices shall be sent to the following or such other addresses as either Party may specify in writing.

If to Seller:

8700 E Via de Ventura #260
Scottsdale, AZ 85258-4516

If to Purchaser:

1010 East 10th Street
Tucson, AZ 85717
Fax: (520) 225-6082

d. Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 15 (Representations and Warranties), Section 9(h) (No Warranty), Section 16(b) (Insurance), Section 18 (Indemnification), Section 21 (Confidentiality and Publicity), Section 23(a) (Choice of Law), Section 23(b) (Attorneys' Fees), Section 23(c) (Notices), Section 23(g) (Comparative Negligence), Section 23(h) (Plea-Dedication of Facilities), Section 23(j) (Service Contract), Section 23(k) (No Partnership) Section 23(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 23(n) (No Third Party Beneficiaries); provided, however, that no surviving provisions shall alter Seller's early termination rights under this Agreement.

e. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other

actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

f. **Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

g. **Comparative Negligence**. It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

h. **Plea-Dedication of Facilities**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use good faith efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with **Section 12** of this Agreement.

i. **Estoppel**. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party; (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets

or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

j. Service Contract. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings that is inconsistent with this intent and this section of the Code.

k. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

l. Full Agreement, Modification, Invalidity, Counterparts, Captions. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter, including but not limited to Purchaser’s request for proposal (RFP) and the Seller’s RFP responses. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

m. Forward Contract. The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

n. No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

o. Definitions and Interpretation. Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and

not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

p. Cancellation for Conflict of Interest. Pursuant to A.R.S. Section 38-511, as applicable, the provisions which are incorporated herein by this reference, this Contract is subject to cancellation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while this Agreement is in effect, an employee or agent of any other Party to this Agreement in any capacity or a consultant to any other Party of this Agreement with respect to the subject matter of this Agreement.

q. Retention and Inspection of Records. The Seller shall retain, and shall contractually require each contractor and subcontractor to retain, all books, accounts, reports, files and other records relating to the performance of this Agreement for a period of five (5) years after the completion of this Agreement and to make such documents open for Purchaser’s inspection and audit at reasonable times as requested by Purchaser.

r. Nondiscrimination. Seller agrees not to discriminate against any employee or applicant for employment, because of sex, race, religion, color, national origin, age or disability in violation of federal or state law. The Parties shall comply with Section 202 of Executive Order 11246. 41 CFR 60-1.4, 41 CFR 60-250.4 and 41 CFR 60-741.5(a) and Arizona Executive Order 99-4 prohibiting discrimination in employment, to the extent applicable to this Agreement.

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IN WITNESS WHEREOF, the Parties have made and entered into this Solar Services Agreement as of the Effective Date.

Purchaser:

Tucson Unified School District

By: _____

Name: _____

Title: _____

Seller:

Natural Power and Energy, LLC

By: _____

Name: _____

Title: _____

Exhibits

Exhibit 1	Contract Price
Exhibit 2	System Description and Scope of Work
Exhibit 3	Form of Memorandum of Easement
Exhibit 3(a)	Legal Description of Premises

Exhibit 1
Contract Price

Purchaser: Tucson Unified School District
 Starting Contract Price: \$0.07/kWh*
 Escalation Factor: 0% Applied annually at the anniversary of the Commercial Operation Date
 Term: 20 Years
 Anticipated Commercial Operation Date: October 30, 2015
 Estimated System Annual Output Degradation Rate: 0.5%

* Note that this price reflects value Seller is receiving due to Purchaser's assignment to Seller of all payments by Utility under the REC Agreement as set forth in Section 7(e).

Contract Price:

	A	B	C
Contract Year	Estimated Productivity** (kWh)	Contract Price (\$/kWh)	Estimated Contract Billing (\$)
			A x B
1	2,273,763	\$0.07	\$159,163
2	2,262,394	\$0.07	\$158,368
3	2,251,083	\$0.07	\$157,576
4	2,239,827	\$0.07	\$156,788
5	2,228,628	\$0.07	\$156,004
6	2,217,485	\$0.07	\$155,224
7	2,206,397	\$0.07	\$154,448
8	2,195,365	\$0.07	\$153,676
9	2,184,389	\$0.07	\$152,907
10	2,173,467	\$0.07	\$152,143
11	2,162,599	\$0.07	\$151,382
12	2,151,786	\$0.07	\$150,625
13	2,141,027	\$0.07	\$149,872
14	2,130,322	\$0.07	\$149,123
15	2,119,671	\$0.07	\$148,377
16	2,109,072	\$0.07	\$147,635
17	2,098,527	\$0.07	\$146,897
18	2,088,034	\$0.07	\$146,162

19	2,077,594	\$0.07	\$145,432
20	2,067,206	\$0.07	\$144,704

**The Estimated Productivity of the Systems is based on the state of the project as of January 13, 2015, and is subject to change depending on systems' final sizes, shading obstructions, and/or module orientation changes that occur as a result of Seller's engineering and construction stages of the project. Seller shall provide updated and final Estimated Productivity amounts as of the Systems' respective final completion dates.

Exhibit 2
System Description and Scope of Work

The preliminary System Configuration on the site and layout of the structures is attached to this Exhibit.

- Project Site Plan
- Equipment Locations
- Meter Location
- License Area

Additional Considerations of this proposal:

- All existing site features that are affected by the installation of the proposed System are to be protected, repaired, replaced or terminated.
- All parking and drive areas affected by the installation of the proposed System are to be patched, coated and restriped.
- All concrete walkways and/or curbing affected by the installation of the proposed System are to be replaced.
- Existing site lighting found to be in conflict with the proposed System is to be removed and terminated at the power source.
- Purchaser and Seller accept that all canopies are designed to be in non-fall zones for students; safety pads will not be provided by Seller.
- Seller will paint all canopies the same color.
- Purchaser understands that the use of some play fields will change after construction. After mutual written agreement by both Seller and Purchaser on the configuration of solar canopies, Purchaser agrees to relocate backstops and playground equipment accordingly.
- Purchaser understands that less light will be incident on play field grass after erection of solar canopies. Maintenance of this grass will remain the responsibility of Purchaser.
- Pricing assumes total system size is greater than or equal to 1.25 MW DC.

Project Design Documents will include:

- Equipment details and description
- Layout of installation, layout of equipment
- Selection of key equipment
- Specifications for equipment procurement and installation
- All engineering associated with structural and mounting details for the site

- Datasheets and Installation manuals of equipment components and subsystems
- Integration of solar PV System with other power sources
- Conformance to electrical grid interconnection requirements for net metering, grid tied
- Controls, monitoring and instrumentation

System Sizing:

The Proposed design is based on information gathered from the following resources:

- Photovoltaic Array and Inverter Manufacturers’ Production Specifications
- National Renewable Energy Laboratory for PV Watts Power Rating

The table below is used to formulate the size of Photovoltaic Energy Generating System for the **Tucson Unified School District**. The combined photovoltaic System is expected to be approximately **1.25MW DC STC** in peak output size at approximately __ project sites. That output rating will be the basis of design for the System inverters and transformers required to feed the power onto the electric utility grid.

System Summary:

Approximate System Size	1,268	kW DC	
Tucson, Arizona – Estimated Solar Insolation	1,792	kWh/kWp	<i>NREL/PV Watts</i>
Estimated Year 1 Productivity	2,273,000	kWh	<i>DC kW x Insolation</i>
Estimated System Array Area	93,940	ft ²	<i>System Array Size</i>

Site-Specific-System Data:

Anna Lawrence Intermediate School

Approximate System Size	155.6	kW DC
Tucson, Arizona - Estimated Solar Insolation	1792	kWh/kWp
Estimated Year 1 Productivity	279,000	kWh
Estimated System Array Area - Square Feet	12,000	Square Feet

Laura Banks Elementary School

Approximate System Size	217.8	kW DC
Tucson, Arizona - Estimated Solar Insolation	1792	kWh/kWp
Estimated Year 1 Productivity	390,000	kWh
Estimated System Array Area - Square Feet	16,000	Square Feet

Valencia Middle School

Approximate System Size	497.8	kW DC
Tucson, Arizona - Estimated Solar Insolation	1792	kWh/kWp
Estimated Year 1 Productivity	892,000	kWh
Estimated System Array Area - Square Feet	37,000	Square Feet

Vesey Elementary School

Approximate System Size	210.5	kW DC
Tucson, Arizona - Estimated Solar Insolation	1792	kWh/kWp
Estimated Year 1 Productivity	377,000	kWh
Estimated System Array Area - Square Feet	16,000	Square Feet

Harriet Johnson Primary School

Approximate System Size	186.7	kW DC
Tucson, Arizona - Estimated Solar Insolation	1792	kWh/kWp
Estimated Year 1 Productivity	335,000	kWh
Estimated System Array Area - Square Feet	14,000	Square Feet

The following table illustrates the long-term effect of a manufacturers’ published panel degradation rate. The selected product is a crystalline Silicon solar PV module, which is the basis of design for the proposed System.

System Age/Year	0-1	5	10	15	20
Production Efficiency	100.00%	98.01%	95.59%	93.227%	90.92%
Annual Degradation Rate	0.50%				

The Seller will secure from governing agencies and the utility company all required rights, permits, approvals, and interconnection agreements at no additional cost to the Purchaser.

The Seller will complete and submit in a timely manner all documentation required to qualify each System for available rebates and incentives.

The Seller will supply and install all equipment required to interconnect the solar PV Systems to the Purchaser’s distribution system. Seller will fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Seller.

The Seller will provide a turnkey data acquisition and display system that allows the Purchaser to monitor, analyze and display historical and live, solar electricity generation data for each installed site. A website with this information will be provided to the

Purchaser, and information will also be available on the kiosk installed as part of the prior solar project between The Parties. The System will allow the Purchaser to track progress toward the renewable goal for each System as well as monitor performance against the projected solar production on a site-by-site basis. The regularly collected data should reflect, but not be limited to, the following:

- System performance
- System availability
- Average and accumulated output
- Production performance

Delivery Points: Seller will identify actual addresses through title diligence occurring after Contract execution. Project scope conceives new solar revenue-grade meters installed at or near and tying into:

- The SES at Anna Lawrence Intermediate School;
 - The SES at Laura Banks Elementary School;
 - The SES at Valencia Middle School;
 - Three different SESs associated with three unique meters at Vesey Elementary School;
- and
- The SES at Harriet Johnson Primary School.

Exhibit 3
Form of Memorandum of Easement

RECORDING REQUESTED BY AND)
 WHEN RECORDED RETURN TO:)
)
 Constellation Solar Arizona, LLC)
 100 Constellation Way, Suite 1000C)
 Baltimore, MD 21202)
 Attn: Asst. General Counsel, Solar)

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

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is made and entered into the __ day of _____, 2015 by and between **Tucson Unified School District** (“Grantor”) and **Constellation Solar Arizona, LLC** (“Grantee”)

A. Grantor is the owner of certain real property (“**Premises**”), located in the County of Pima, State of Arizona, described in **Exhibit A** attached to and incorporated herein by reference.

B. Grantor and Grantee (as assignee of Natural Power and Energy, LLC) have entered into a Solar Services Agreement dated as of _____, 2015 (the “**Agreement**”) under which Grantee has agreed to finance, design, develop, and operate a photovoltaic electric generating system (“**System**”) for Grantor on the Premises, and under which Grantor has granted to Grantee easement and related rights to the Premises for purposes of designing, developing, and operating the System the extent of which easement is described on Exhibit B hereto.

C. Grantor and Grantee have executed and acknowledged this Memorandum of Easement and are recording the same for the purpose of providing constructive notice of the Agreement, the easement therein, and Grantee’s rights thereunder. Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Agreement.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements of Grantor and Grantee contained in the Agreement and herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grantor has granted to Grantee certain easements and related rights with respect to the Premises during the term of the Agreement, as more particularly set forth in the Agreement. Such terms, conditions and covenants as set forth in the Agreement are incorporated herein by reference as though fully set forth herein.

2. This Memorandum of Easement shall not be deemed to modify, alter or amend in any way the certain easements and related rights with respect to the Premises as set forth in the

Agreement. In the event of any conflict between the provisions of this Memorandum and the terms of the easements and related rights set forth in the Agreement, the provisions of the Agreement shall control.

3. This Memorandum is executed by the parties hereto for the purpose of recordation in the real property records of Pima County, Arizona, to give notice of and to confirm the easements and related rights set forth in the Agreement and all of its terms to the same extent as if all provisions thereof were fully set forth herein.

4. This Memorandum of Easement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

GRANTEE:

Constellation Solar Arizona, LLC

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2015, before me _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Exhibit A
To the Memorandum of Easement

Legal Description of the Premises

Exhibit 3(a)
Legal Description of Premises

The following pages include legal descriptions and site plans for each site in scope. These site plans are intended to show the property in scope; array locations are shown to represent the basis of design and are preliminary only.

- [NAME & DESCRIPTION]