

ORDINANCE NO. BL2021-613

An ordinance approving a contract between the Metropolitan Government of Nashville and Davidson County, through the Department of Water and Sewerage Services and Lightwave Solar, LLC for the design, construction, operation, management, and administration services related to photovoltaic solar facilities located at Central Wastewater Treatment Plant, Whites Creek Wastewater Treatment Plant and Omohundro Water Treatment Plant.

WHEREAS, renewable energy sources are inexhaustible, and free of climate-warming pollution that is harmful to human and environmental health; and,

WHEREAS, Metropolitan Code of Laws Section 2.32.080 sets forth renewable energy portfolio standards to power Metro General Government operations, with the Metropolitan Government required to utilize 35% tier-one renewable energy sources by 2025, 2.45% of which must be derived from solar, and by 2041 to utilize 100% tier-one renewable energy, 10% of which must be from solar; and,

WHEREAS, Metro Water Services desires to enter into a contract with Lightwave Solar, LLC for the design, construction, operation, management, and administration services of three (3) solar facilities, the ("System"), located at Metro Water Services' Central Plant, Whites Creek Plant and Omohundro Plant; and,

WHEREAS, the term of the agreement is thirty (30) years, calculated from the date at which Lightwave gives MWS written notice that the System is mechanically complete and capable of providing energy to the delivery point; and,

WHEREAS, in order to construct the System, pursuant to the contact, Metro must agree to lease a portion of the premises where the System will be located to Lightwave ("Site Lease Agreement"); and,

WHEREAS, Section 4.12.160 of the Metropolitan Code limits the term of contracts for supplies to sixty (60) months, unless otherwise authorized by the Metropolitan Council; and,

WHEREAS, it is in the best interest of the Metropolitan Government of Nashville and Davidson County that this contract be approved.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the contract between the Metropolitan Government of Nashville and Davidson County, through the Department of Water and Sewerage Services, and Lightwave Solar, LLC for the design, construction, operation, management, and administrative services related to photovoltaic solar facilities located at Central Wastewater Treatment Plant, Whites Creek Wastewater Treatment Plant and Omohundro Water Treatment Plant, attached hereto and incorporated herein, is hereby approved, and the Metropolitan Mayor is authorized to execute the same.

Section 2. That the Director of Public Property Administration, or his designee, is authorized to execute the Site Lease Agreement, attached hereto as Exhibit A, Section 5, and incorporated herein, in the form attached hereto or in substantially similar form.

Section 3. Amendments to this legislation shall be approved by resolution.

Section 4. This ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

Scott Potter

Scott A. Potter, Director
Water and Sewerage Services

Trael Webb

Trael Webb, Director
Public Property Administration

APPROVED AS TO THE
AVAILABILITY OF FUNDS:

Kevin Crumbo

Kevin Crumbo, Director
Department of Finance

TE

APPROVED AS TO FORM
AND LEGALITY:

Tara Ladd

Assistant Metropolitan Attorney

INTRODUCED BY:

Kymoni Johnson

Robert A. Nash

Bunty Miller

Council Member(s)

TP

Contract Abstract

Contract Information

Contract & Solicitation Title: Solar Energy Management System for Metro Water Services MLL

Contract Summary: Design, finance, install, own, operate, and maintain solar arrays on three (3) Metro Water Services' (MWS) properties.

Contract Number: 6486558 Solicitation Number: 88160 Requisition Number: 4020508

Replaces Expiring Contract? (Enter "No" or Expiring Contract No.): No

Type of Contract/PO: Multi-Year Contract **Requires Council Legislation:** Yes

High Risk Contract (Per Finance Department Contract Risk Management Policy): No

Sexual Harassment Training Required (per BL2018-1281): Yes

Estimated Start Date: 11/18/2020 Estimated Expiration Date: 11/17/2025 Contract Term: 60months

Estimated Contract Life Value: \$11,192,756.40. Fund: 65560210 BU: 67331

Payment Terms: Net 30 Selection Method: RFP

Procurement Staff: Michelle Lane BAO Staff: Jerval Watson

Procuring Department: Metro Water Services Department(s) Served: Metro Water Services

Prime Contractor Information

Prime Contracting Firm: Lightwave Solar LLC. ISN#: 9943

Address: 3026 Owen Drive, STE 104, City: Antioch State: TN Zip: 37013

Prime Contractor is a Uncertified/Unapproved: SBE SDV MBE WBE (select/check if applicable)

Prime Company Contact: Jon Paul Plumlee Email Address: jplumlee@lightwavesolar.com Phone #: (615) 641-4050

Prime Contractor Signatory: ckoczaja@lightwavesolar.com Email Address: ckoczaja@lightwavesolar.com

Disadvantaged Business Participation for Entire Contract

Small Business and Service Disabled Veteran Business Program:

N/A Amount: NA Percent, if applicable: NA

Equal Business Opportunity (EBO) Program:

Program Not Applicable Amount: NA Percent, if applicable: NA

Federal Disadvantaged Business Enterprise:

No Amount: NA Percent, if applicable: NA

* Amounts and/or percentages are not exclusive.

B2GNow (Contract Compliance Monitoring): No

Summary of Offer

Offeror Name	Disadv. Bus. (Check if applicable)	Score (RFQ Only)	Evaluated Cost	Result
<u>Lightwave Solar INC</u>	<input checked="" type="checkbox"/>	<input type="text"/>	<u>\$0.07</u>	<u>Awarded</u>
<u>Ameresco</u>	<input type="checkbox"/>	<input type="text"/>	<u>\$1.00</u>	<u>Evaluated but not selected</u>
<u>Entegry</u>	<input type="checkbox"/>	<input type="text"/>	<u>\$0.05</u>	<u>Evaluated but not selected</u>

Contract Abstract

Inman

1

\$75.00

Evaluated but not selected

Silicon Ranch

1

\$0.09

Evaluated but not selected

SOLAR GOODS AND SERVICES CONTRACT

1.1. Heading

This contract (the "Contract") is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and [**LightWave Solar, LLC**, a Tennessee limited liability company] ("CONTRACTOR") located at 3026 Owen Drive, STE 104, Antioch, TN 37013. This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including the Solar Services Agreement" (hereinafter, "Exhibit A")*
- *The solicitation documentation for RFQ# 88160 and affidavit(s)(all made a part of this contract by reference), with the following changes:*
 - "Grounds with the fenced perimeter shall be maintained to the satisfaction of MWS" shall be changed to "Contractor will maintain grounds within the fence to prevent vegetation from growing through the panels of the array and below the leading edge of the array."
 - "Updates, replacements, repairs, and associated costs necessary to maintain operations of the systems shall be the responsibility of the provider. The associated costs shall be included in the system design as expressed in Exhibit – C" shall be changed to "Updates, replacements, repairs, and associated costs necessary to maintain operations of the systems shall be the responsibility of the provider, unless such replacement, repairs or associated costs are the result of MWS' negligence or Metro's default under this Contract. The associated costs shall be included in the system design as expressed in Exhibit – C."
 - "Monitoring and control equipment shall report to the MWS data collection system and be viewable online. Data reported on a real time basis shall include any requested by MWS." Shall be changed to "Monitoring and control equipment shall report to the MWS data collection system and be viewable online. Data reported on a real time basis shall include any requested by MWS, provided the information is available in the data logger for MWS to integrate into their monitoring."
 - "Equipment shall produce the expected annual energy generation (EAEG) as proposed by the provider in Exhibit – C. Deviation, measured annually, of more than ten percent will trigger adjustment in the form of a credit or payment by the provider to MWS." Shall be changed to "Equipment shall produce the expected annual energy generation (EAEG) as proposed by the provider in Exhibit – C. Deviation, measured annually, of more than ten percent will trigger adjustment in the form of a credit or payment by the provider to MWS. The performance guaranty calculation shall include a provision such that MWS be paid only for production underperformance on a cumulative basis."
- *Purchase Orders (and PO Changes),*
- *CONTRACTOR's response to the solicitation,*
- *Equal Business Opportunity (EBO) Program forms (incorporated by reference).*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. This is a Contract for goods and services pursuant to which CONTRACTOR shall provide design, construction, operation, management, and administration services related to a photovoltaic solar facility located at a METRO facility pursuant to the terms of the Solar Services Agreement, attached hereto as Exhibit A, the provisions of which shall be made a part of this contract by this reference. This Contract is not an agreement for the per kWh sale of electrical energy.

3. CONTRACT TERM

3.1. Contract Term

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. This Contract Term will end thirty (30) years from the date the system is energized.

4. COMPENSATION

4.1. Contract Value

This Contract has an estimated value of \$11,192,756.40. The pricing details are included in Exhibit A and are made a part of this Contract by reference. CONTRACTOR shall be paid monthly after the system is energized and METRO is accordingly, invoiced.

4.2. Other Fees

There will be no other charges or fees for the performance of this Contract. METRO will make payments within 30 days of receipt of invoice. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 30 days.

4.3. Payment Methodology

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all goods and/or services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with Exhibit A of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for delivered/performed products and/or services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the provision of the products and/or services as described in Exhibit A – Solar Services Agreement.

4.4. Escalation/De-escalation

This Contract is not eligible for annual escalation/de-escalation adjustments.

4.5. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4.6. Invoicing Requirements

CONTRACTOR shall invoice METRO no more frequently than once a month or for the satisfactorily and accurately delivered/performed products and/or services. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation; METRO shall provide CONTRACTOR with the Contract Number in writing promptly upon assignment. CONTRACTOR shall submit all invoices no later than ninety (90) days after the products and/or services have been delivered/performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming product and/or service but prior to any substantial change in condition of the products and/or services caused by METRO.

4.7. Subcontractor/Subconsultant Payments

When payment is received from METRO, CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, subconsultants, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event METRO becomes informed that CONTRACTOR has not paid a subcontractor, subconsultant, laborer, or supplier as provided herein, METRO shall have the right, but not the duty, to issue future checks and payments to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and any such subcontractor, subconsultant, laborer, or supplier as joint payees. Such joint check procedure, if employed by METRO, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit METRO to repeat the procedure in the future. If persistent, this may be

determined to be a material breach of this Contract.

5. TERMINATION

5.1. Breach

Should CONTRACTOR fail to fulfill in a timely and proper manner the obligations under this Contract or if either party should violate any of the terms of this Contract or the terms contained in Exhibit A, the other party shall be entitled to such remedies (and subject to the cure periods) as further described in Exhibit A.

5.2. Lack of Funding; Notice

METRO may terminate this Contract at its discretion, whether funding for this Contract is discontinued or for any other reason by providing 90 days written notice to CONTRACTOR and:

- i) if prior to the commencement of construction, paying to CONTRACTOR documented amounts incurred by CONTRACTOR for the provision of services pursuant to this Contract (including materials procured in good faith) prior to receipt of notice of termination from METRO and without further liability for costs or damages; OR
- ii) if after the commencement of construction, paying to CONTRACTOR the Site Host Termination Payment described in Section 13(b)(iii) of Exhibit A and without further liability for costs or damages.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Equal Business Opportunity (EBO) Program Requirement

The consideration and contact of minority-owned and/or woman-owned business enterprises is required for a responsive offer to most solicitations. The provision of the Equal Business Opportunity (EBO) Program documents shall be part of each applicable solicitation response and incorporated herein by reference. CONTRACTOR agrees to comply with the Equal Business Opportunity (EBO) Program, if applicable, in the execution of this Contract.

6.4. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.5. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the

Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. INSURANCE

7.1. Proof of Insurance

Prior to, during initial construction, and until completion of construction of the project, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect, the types and amounts of insurance identified below. After completion of construction of the project, insurance requirements shall be governed by the provisions of Exhibit A. Proof of insurance shall be required naming METRO as additional insured and identifying either the project name, RFQ or Contract number on the ACORD document.

7.2. Products Liability Insurance

Not Applicable

7.3. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.4. Automobile Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (if CONTRACTOR will be making on-site deliveries)

7.5. Worker's Compensation Insurance (if applicable)

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

7.6. Technological Errors and Omissions Liability Insurance

In the amount of one-million (\$1,000,000.00) dollars.

7.7. Cyber Liability Insurance

Not Applicable

7.8. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that

includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

7.9. Other Insurance Requirements

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

PROCUREMENTCOI@NASHVILLE.GOV

Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.

Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

8. GENERAL TERMS AND CONDITIONS

8.1. Taxes

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO. CONTRACTOR shall not be responsible for any taxes that are imposed on METRO.

8.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective

goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice. Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

8.3. Software License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or CONTRACTOR's response to the solicitation.

8.4. Confidentiality

Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

CONTRACTOR, and its Agents, for METRO, may have access to sensitive information. CONTRACTOR, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, CONTRACTOR shall return all information in whatever form. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against CONTRACTOR, including but not limited to emergency and ex parte relief where available.

8.5. Information Ownership

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, CONTRACTOR shall supply METRO with an inventory of METRO information that CONTRACTOR stores and/or backs up.

8.6. Information Security Breach Notification

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable,

CONTRACTOR shall notify METRO of any data breach within 24 hours of CONTRACTOR's knowledge or reasonable belief (whichever is earlier) that such breach has occurred ("Breach Notice") by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. CONTRACTOR shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.

8.7. Virus Representation and Warranty

CONTRACTOR represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall CONTRACTOR or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, CONTRACTOR shall compensate METRO for any and all harm, injury, damages, costs, and expenses incurred by METRO resulting from the breach.

For CONTRACTOR managed systems, CONTRACTOR shall install and maintain ICSA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. CONTRACTOR shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices. In addition, CONTRACTOR shall ensure that:

- Anti-virus Software checks for new Anti-virus signatures no less than once per day, and;
- Anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the Anti-virus signatures for the Anti-virus Software

8.8. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing
- Remove the products or discontinue the services and cancel any future charges pertaining thereto Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:
- The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
- The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,

- The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

8.9. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

8.10. Monitoring

CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

METRO shall have the option of reviewing and performing a security assessment of the information security management practices of CONTRACTOR. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at CONTRACTOR's premises the Products and/or Services to ensure compliance with the terms and conditions of this Contract. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

8.11. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Contract; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR; and, all other original works of authorship, whether created by METRO or CONTRACTOR embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

Except as to Contracts involving sensitive information, CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization. CONTRACTOR shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the METRO Chief Information Security Officer.

8.12. Modification of Contract

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

8.13. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

8.14. Waiver

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

8.15. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

8.16. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

8.17. Iran Divestment Act

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

8.18. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

8.19. Ethical Standards

It shall be a breach of the Ethics in Public Contracting standards in the Metropolitan Code of Laws for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of the Ethics in Public Contracting standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical and legal

standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

Pursuant to Metropolitan Code of Laws, Section 4.48.020, entities and persons doing business with, or proposing to do business with, the Metropolitan Government of Nashville & Davidson County must adhere to the ethical standards prescribed in Section 4.48 of the Code. By signing this contract, you agree that you have read the standards in Section 4.48 and understand that you are obligated to follow them. Violation of any of those standards is a breach of contract and a breach of legal standards that may result in sanctions, including those set out in Section 4.48.

8.20. Indemnification and Hold Harmless

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. Any claims, damages, and costs for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. Any claims, damages, penalties, and costs arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

METRO shall indemnify and hold harmless CONTRACTOR, its officers, agents, and employees from, to the fullest extent permitted by applicable law:

- A. Any claims, damages, and costs, for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of METRO, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. Any claims, damages, penalties, and costs arising from any failure of METRO, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws.

8.21. Assignment--Consent Required

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Notwithstanding the above, CONTRACTOR may assign this Contract in connection with the financing of the solar System pursuant to Section 19 of Exhibit A, provided that CONTRACTOR shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of CONTRACTOR's obligations hereunder by the assignee.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

PRG@NASHVILLE.GOV (preferred method)
OR
METRO PURCHASING AGENT
DEPARTMENT OF FINANCE
PROCUREMENT DIVISION

**730 2ND AVENUE SOUTH
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request except as otherwise provided in this Contract.

8.22. Entire Contract

This Contract, together with its exhibits, sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

8.23. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

8.24. Governing Law

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

8.25. Venue

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

8.26. Severability

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

[EXHIBIT A: FORM OF SOLAR SERVICES AGREEMENT FOLLOWS]

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EXHIBIT A
To Goods and Services Contract
SOLAR SERVICES AGREEMENT

[See Attached]

Contract Number 6486558

Notices and Designation of Agent for Service of Process

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT
PROCUREMENT DIVISION
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300
PRG@NASHVILLE.GOV**

(THE FOLLOWING MUST BE COMPLETED BY CONTRACTOR. N/A OR "X" IS NOT ACCEPTABLE)

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR:

Attention: Chris Koczaja

Address: 3026 Owen Drive Suite 104, Antioch, TN 37013

Telephone: +1-615-641-4050

Fax: +1-615-641-2219

E-mail: ckoczaja@lightwavesolar.com

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

(THIS SECTION MUST BE COMPLETED)

Designated Agent: N/A

Attention: N/A

Address: N/A

E-mail: N/A

[SPACE INTENTIONALLY LEFT BLANK]

Contract Number 6486558

Effective Date

This contract shall not be binding upon the parties until it has been fully electronically approved by the supplier, the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

APPROVED AS TO PROJECT SCOPE:

Scott Potter [Signature]
Dept. / Agency / Comm. Head or Board Chair. Dept. Fin.

APPROVED AS TO COMPLIANCE WITH PROCUREMENT CODE:

Michelle D. Hernandez Lane [Signature]
Purchasing Agent Purchasing

APPROVED AS TO AVAILABILITY OF FUNDS:

Kevin Cumbotto TE St
Director of Finance OMB BA

APPROVED AS TO FORM AND LEGALITY:

Tara Ladd BL
Metropolitan Attorney Insurance

FILED BY THE METROPOLITAN CLERK:

Metropolitan Clerk Date

CONTRACTOR:

Lightwave solar, LLC
Company Name

Chris Koczaja
Signature of Company's Contracting Officer

Chris Koczaja
Officer's Name

CEO
Officer's Title

EXHIBIT A
to Goods and Services Agreement

This **SOLAR SERVICES AGREEMENT** (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Service Provider below (the “**Effective Date**”).

“Site Host”:		“Service Provider”:	
Name and Address	Metropolitan Government of Nashville and Davidson County Purchasing Agent, Procurement Division Department of Finance PO Box 196300 Nashville, TN 37219-6300	Name and Address	LightWave Solar, LLC 3026 Owen Drive, STE 104 Antioch, TN 37013 Attention: Christopher J. Koczaja
Phone	None	Phone	(615) 641-4050
Fax	None	Fax	(615) 641-2219
E-mail	None	E-mail	ckoczaja@lightwavesolar.com
Premises Ownership	Site Host <input checked="" type="checkbox"/> owns <input type="checkbox"/> leases the Premises. List Premises Owner, if different from Site Host: N/A	Additional Service Provider Information	

This Agreement sets forth the terms and conditions of the design, construction, operation, management, and administration services related to a photovoltaic solar facility as described in **Section 2** (the “**System**”) and installed at the Site Host’s real property located at the System Location identified in Section 2 (the “**Premises**”) and/or the Site Host’s facilities, buildings, and improvements described in **Section 2** (if applicable, the “**Facility**”).

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

<u>Section 1</u>	Basic Terms and Conditions
<u>Section 2</u>	System Description
<u>Section 3</u>	[Reserved]
<u>Section 4</u>	General Terms and Conditions
<u>Section 5</u>	Form of Site Lease
<u>Section 6</u>	Form of Memorandum of Lease
<u>Section 7</u>	Form of Performance Guaranty

Site Host:

Metropolitan Government of Nashville and Davidson County

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Service Provider:

LightWave Solar, LLC

Signature: Chris Koczaja _____Printed Name: Chris Koczaja _____Title: CEO _____Date: 1/11/2021 | 12:17 PM CST _____

Approved as to Availability of Funds (Site Host)

Signature: Kevin Crumbo/tlo

Printed Name: Kevin Crumbo/tlo

Title: Director of Finance

Date: 1/11/2021 | 1:05 PM CST

Approved as to Form and Legality (Site Host)

Signature: Tara Ladd

Printed Name: Tara Ladd

Title: Assistant Metropolitan Attorney

Date: 1/11/2021 | 11:06 AM PST

**Section 1 – Solar Services Agreement:
Basic Terms and Conditions**

1. **Term:** Thirty (30) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** By mutual written agreement of the Parties.
3. **Environmental Incentives and Environment Attributes:** Accrue to Service Provider.
4. **Monthly Fee:** Each Monthly Fee payment is due on the monthly anniversary date of the Commercial Operation Date, .

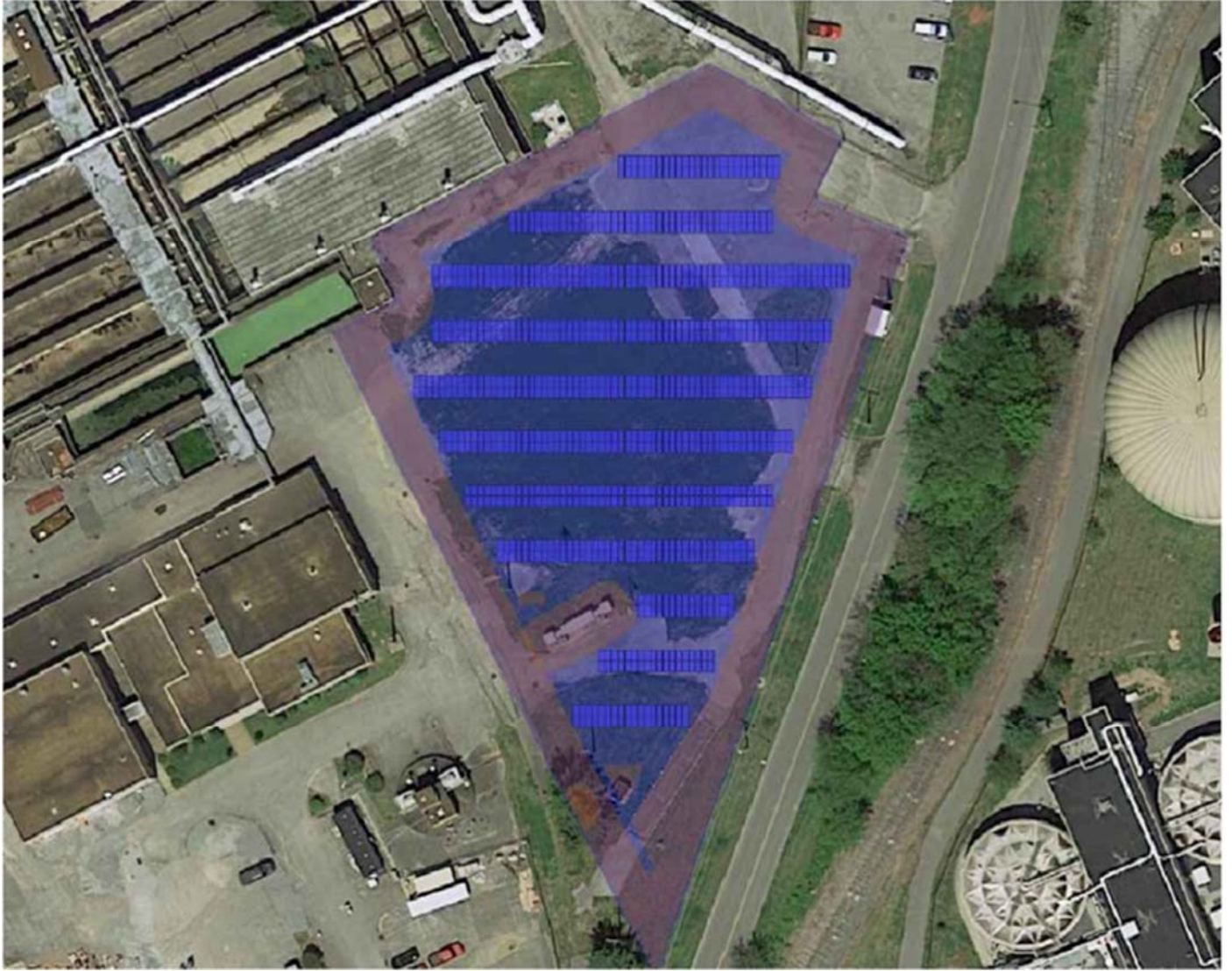
Contract Years	\$/month
1-30	\$31,090.99

5. **Condition Satisfaction Date:** September 30, 2021
6. **Anticipated Commercial Operation Date:** December 31, 2021
7. **Rebate Variance.** All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.
8. **Site Host Options to Purchase System.** None or as set forth in Section 16(b).
9. **Outside Commercial Operation Date:** June 30, 2022.
10. **System Installation:**

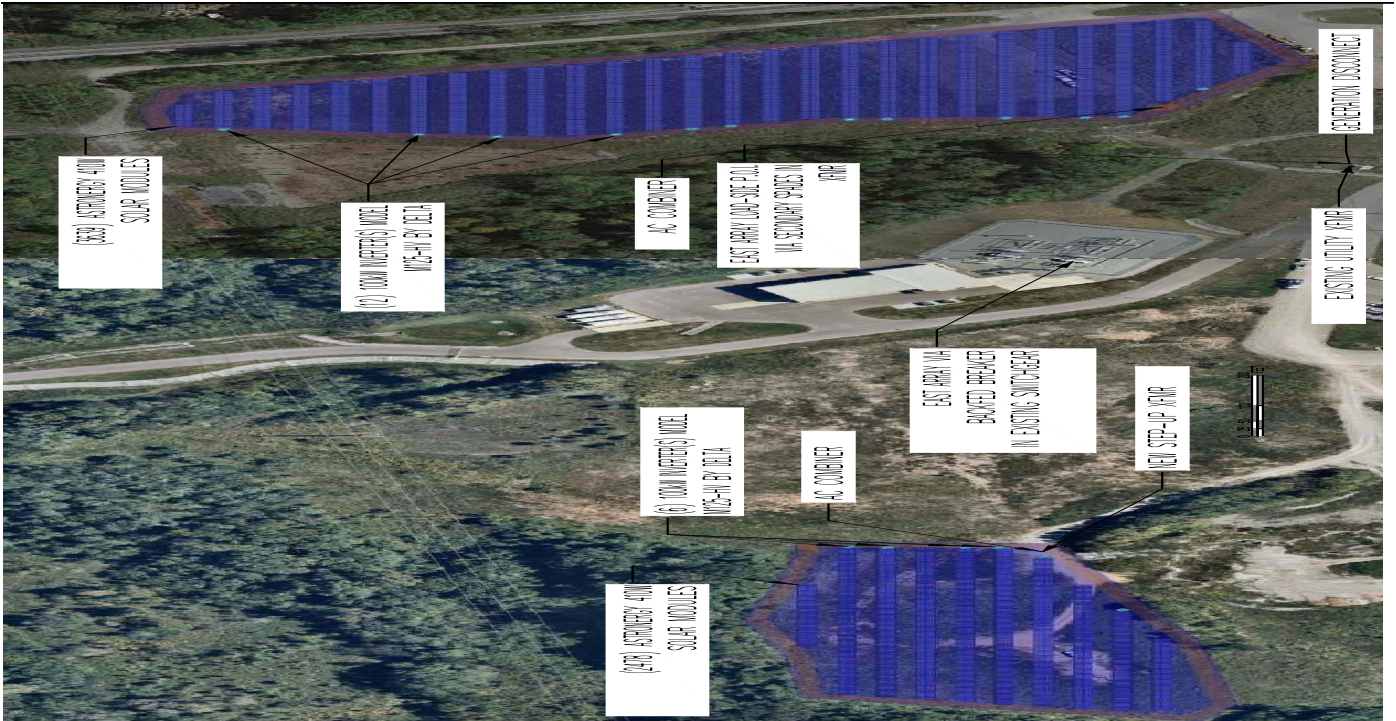
Includes:	<ul style="list-style-type: none"> • Complete design, engineering, permitting, procurement, installation, construction, and commissioning of the System; • Complete operation and maintenance of the System during the Term, including repair and administration of manufacturer’s warranties; • Performance Guaranty; • Tree removal in accordance with all ordinances and permit requirements.
Excludes:	<ul style="list-style-type: none"> • Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles); • Upgrades or repair to the Facility or utility electrical infrastructure.

Section 2 – Solar Services Agreement
System Description

1. **System Location (“Premises”):**
 - a. Site 1: Central Location: 1700 3rd Ave N, Nashville TN 37208
 - b. Site 2: Omohundro Location: 1427 Lebanon Pk, Nashville TN 37210
 - c. Site 3: White’s Creek Location: 1360 County Hospital Rd, Nashville TN 37218
2. **System Size (DC kW):**
 - a. Site 1: 554.32 DC kW
 - b. Site 2: 2,507.97 DC kW
 - c. Site 3: 946.28 DC kW
3. **Expected First Year Energy Production (kWh):**
 - a. Site 1: 751,028 kWh
 - b. Site 2: 3,411,278 kWh
 - c. Site 3: 1,339,322 kWh
4. **Expected Structure for all sites:** Ground Mount Roof Mount Parking Structure Other
5. **Utility:** Nashville Electric Service for all sites
6. **System Layout:** See below:
Site 1: Central WWTP



Site 2: Omohundro South



Site 3: Whites Creek WWTP



Section 2 – Solar Services Agreement

Attachment A:

Facility Layout

“Facility” shall mean the facilities, buildings and/or improvements located at the Premises and identified below:

- a. Site 1: Central WWTP Facility Location: 1700 3rd Ave N, Nashville TN 37208:



- b. Site 2: Omohundro South Facility Location: 1427 Lebanon Pk, Nashville TN 37210



c. Site 3: White's Creek WWTP Facility Location: 1360 County Hospital Rd, Nashville TN 37218



Section 3

[RESERVED]

Section 4 - Solar Services Agreement General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Solar Services.** Service Provider agrees to provide the following services pursuant to this Agreement: i) design, engineer, permit, procure, install, construct and commission the System (described further in Exhibit 2 to this Agreement) on the Premises, ii) operate, maintain, and administer the System at all times during the Term, and iii) provide to Site Host all of the electrical energy generated by the System during the Term (the “**Solar Services**”) to Site Host, and Site Host agrees to accept the Services from the Service Provider.
3. **Term.** The term (“**Term**”) of this Agreement shall commence on the date Service Provider gives Site Host written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point (the “**Commercial Operation Date**”) and continue, unless earlier terminated as provided for in this Agreement, until the end of the period stated in **Exhibit 1** to this Agreement
4. **Monthly Fee, Payment Terms and Taxes.**
 - a. **Monthly Fee.** Site Host shall pay Service Provider for the performance of the Solar Services at the rate and intervals shown in **Exhibit 1** (“**Monthly Fee**”).
 - b. **Monthly Invoices.** For the convenience of Site Host only, Service Provider may invoice Site Host monthly, stating (i) the Monthly Fee due, (ii) any additional charges incurred by Site Host under this Agreement and (iii) the total amount due from Site Host. Site Host's obligation to timely pay amounts due under this Agreement shall not be affected by the failure of Service Provider to issue an invoice or any inaccuracy in any invoice.
 - c. **Taxes.** Site Host is a tax-exempt governmental entity and will provide evidence of its certification of tax exempt status. Site Host shall not be responsible for any taxes imposed on Service Provider (including property taxes on the System which shall be paid in all instances by Service Provider), and Service Provider shall not be responsible for any Taxes imposed on Site Host. Further, Service Provider understands that it cannot claim exemption from taxes by virtue of any exemption provided by Site Host. For purposes of this **Section 4(c)**, “**Taxes**” means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Service Provider’s revenues for Services under this Agreement, which shall be Service Provider’s responsibility.
 - d. **Payment Terms.** All amounts due under this Agreement shall be due and payable on the date set forth in **Exhibit 1**. If Monthly Fee is not paid within thirty (30) days of its due date, any outstanding amount shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate (but not to exceed the maximum rate permitted by law).
5. **Environmental Attributes and Environmental Incentives.** Unless otherwise specified on **Exhibit 1**, Service Provider is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and the location of the System at Site Host’s Premises does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of

ownership and operation of the System, all of which shall be retained by Service Provider. Site Host shall cooperate with Service Provider in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Site Host shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Service Provider. If any Environmental Incentives are paid directly to Site Host, Site Host shall immediately pay such amounts over to Service Provider. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Site Host, if engaged in commerce and/or trade, shall submit to Service Provider for approval any press releases regarding Site Host's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Service Provider. Approval shall not be unreasonably withheld, and Service Provider's review and approval shall be made in a timely manner to permit Site Host's timely publication. Site Host and Service Provider shall file all tax returns in a manner consistent with this Section 5.

“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 (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) 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, emissions allowances, green tags tradable renewable credits and Green-e® products.

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

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

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

6. **Conditions to Obligations.**

- a. **Conditions to Service Provider's Obligations.** Service Provider's obligations under this Agreement are conditioned on the completion of the following conditions to Service Provider's reasonable satisfaction on or before (the “Condition Satisfaction Date”):

- i. Completion of a physical inspection of the Facility and the Premises including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
 - ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Service Provider's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Service Provider and any contractor or subcontractor to install the System;
 - iii. Confirmation that Service Provider is eligible to obtain all applicable Environmental Incentives and Tax Credits related to the System;
 - 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 Facility electrical system and/or the Utility's electric distribution system.
- b. Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Service Provider may terminate this Agreement upon ten (10) business days written notice to Site Host without liability for costs or damages or triggering a default under this Agreement.
- c. Commencement of Construction.** Service Provider's obligation to commence construction and installation of the System is conditioned on Service Provider's receipt of (A) proof of insurance for all insurance required to be maintained by Site Host under this Agreement, or evidence that Site Provider, as a metropolitan form of government, is self-insured in an adequately funded Self-Insurance Program, up to the limits as set out by statute, and (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Service Provider's rights under this Agreement for as long Service Provider is not in default hereunder.

7. Service Provider's Rights and Obligations.

- a. Permits and Approvals.** Service Provider, with Site Host'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.

Site Host shall cooperate with Service Provider's reasonable requests to assist Service Provider in obtaining such agreements, permits and approvals. However, Site Host shall not incur any cost or expense in providing such assistance.

- b. Standard System Repair and Maintenance.** Service Provider shall construct and install the System at the Premises. During the Term, Service Provider will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except that Site Host shall reimburse Service Provider for the cost of any repairs or maintenance resulting from Site Host's negligence, willful misconduct or breach of this Agreement. Service Provider shall not be responsible for any work done by others on any part of the System unless Service Provider authorizes that work in advance in writing. Service Provider 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 Service Provider or Service Provider's contractors. If the System requires repairs for which Site Host is responsible, Site Host shall pay Service Provider for diagnosing and correcting the problem at Service Provider or Service Provider's contractors' then current standard rates. Service Provider shall provide Site Host with reasonable notice prior to accessing the Facility to make standard repairs.

- c. **Non-Standard System Repair and Maintenance.** If Service Provider incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Site Host and relied upon by Service Provider, 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 Service Provider. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Service Provider shall notify Site Host within twenty-four (24) hours following Service Provider's discovery of any material malfunction in the operation of the System. Site Host and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Site Host shall notify Service Provider immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Service Provider shall be entitled to suspend operation of the System for the purpose of maintaining and repairing the System and such suspension of operation shall not constitute a breach of this Agreement; provided, that Service Provider shall use commercially reasonable efforts to minimize any interruption in operation to the Site Host.
- f. **Use of Contractors and Subcontractors.** Service Provider shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Service Provider shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- g. **Liens and Payment of Contractors and Suppliers.** Service Provider shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Service Provider under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Service Provider is permitted by law to place on the Facility following non-payment by Site Host of amounts due under this Agreement. Service Provider shall indemnify Site Host for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Service Provider shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **Quiet Enjoyment.** Service Provider will not disturb Site Host's quiet enjoyment of the System during the Term unless a Default Event has occurred and is continuing under this Agreement; provided, however, that Service Provider shall have the right to access the System to perform Service Provider's obligations under this Agreement.

8. **Site Host's Rights and Obligations.**

- a. **Site Lease to the Premises; Facility Access Rights.** Site Host and Service Provider shall enter into a lease agreement for that portion of the Premises and/or Facility that constitutes the System's site for the duration of the Term, substantially in the form set forth in **Section 5** (the "**Site Lease**"). At request of Service Provider, Site Host shall execute a Memorandum of Lease, which

shall be in form and substance set forth in Exhibit 6, or other form agreed to by the parties. Service Provider may, at its sole cost and expense, record such Memorandum of Lease with the appropriate land registry or recorder's office. Further, Site Host grants to Service Provider and to Service Provider's agents, employees, contractors and assignees an irrevocable non-exclusive license (the "**Site License**") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Service Provider's obligations and enforcing all of Service Provider's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Site Host's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Service Provider shall not access Site Host's Premises for any purpose not enumerated herein and shall use its best efforts to not unreasonably disturb the use of Site Host's property. Service Provider shall notify Site Host prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the Site License shall survive this Agreement and continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement. Site Host shall ensure that Service Provider's rights under the Site License and Service Provider's access to the Premises and the Facility are preserved.. Site Host shall not interfere with nor shall permit any third parties to interfere with such rights or access.

- b. **Receipt and Use of Electricity.** Site Host shall take delivery of all of the electric energy generated by the System during the Term. Site Host shall be responsible for delivering to the Utility any electric energy generated by the System that is in excess of Site Host's electric requirements at the time of delivery. Site Host may purchase electric energy for the Facility from other sources if the Site Host's electric requirements at the Facility exceed the output of the System.
- c. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- d. **Maintenance of Facility.** Site Host shall, at its sole cost and expense, maintain the Facility in good condition and repair. Site Host will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility from the Utility. Site Host is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Site Host's equipment that utilizes the System's outputs. Site Host shall properly maintain in full working order all of Site Host's electric supply or generation equipment that Site Host may shut down while utilizing the System. Site Host shall promptly notify Service Provider of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- e. **No Alteration of Facility.** Site Host shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Service Provider's prior written consent. If Site Host wishes to make such alterations or repairs, Site Host shall give prior written notice to Service Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Service Provider the opportunity to advise -Site Host in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Site Host shall be responsible for all damage to the System caused by Site Host or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Site Host's alterations and repairs, shall be done by Service Provider or its contractors at Site Host's cost. In addition, if not a Scheduled Outage, Site Host shall pay Service Provider an amount equal to the sum of (i) revenues that Service Provider would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have

been produced during such disconnection or removal; (ii) revenues from Environmental Attributes that Service Provider would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iii) Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be determined by Service Provider on a commercially reasonable basis. All of Site Host's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

- f. **Outages.** Site Host shall be permitted to be off line for a total of forty-eight (48) day light hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Site Host shall not be obligated to reimburse Service Provider for lost or recaptured Environmental Incentives or lost sales (and penalties payments associated with the same) of associated Environmental Attributes (collectively, "**Lost Environmental Revenue**"), as otherwise provided herein; provided, however, that Site Host must notify Service Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Site Host shall pay Service Provider an amount equal to the sum of (i) revenues that Service Provider would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (ii) revenues from Environmental Attributes that Service Provider would have received with respect to electric energy that would have been produced by the System during the outage; and (iii) Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall determined by Service Provider on a commercially reasonable basis.
- g. **Identification of Equipment.** Site Host agrees, at Service Provider's request, to (i) permit Service Provider to prominently label the System as Service Provider's personal property; (ii) not disturb, remove or obscure, or permit any person other than Service Provider to disturb, remove or obscure such labeling and (iii) permit Service Provider to replace promptly any such labeling which may be disturbed, removed or obscured.
- h. **Liens.** Site Host 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. Site Host shall immediately notify Service Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and shall promptly cause the same to be discharged and released of record without cost to Service Provider, and if Site Host fails to do so promptly (and in any event within 5 Business days' of the attachment of such lien), Service Provider may discharge or release such lien and Site Host, to the extent permitted by state law, shall indemnify Service Provider against all costs and expenses incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- i. **Security.** Site Host shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Site Host. Site Host will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- j. **Insolation.** Site Host understands that unobstructed access to sunlight ("**Insolation**") is essential to Service Provider's performance of its obligations and a material term of this Agreement. Site Host shall not in any way cause and, where possible, shall not in any way permit any interference

with the System's Insolation. If Site Host becomes aware of any activity or condition that could diminish the Insolation of the System, Site Host shall notify Service Provider immediately and shall cooperate with Service Provider in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would reduce the electrical output of the System, and if any reduction in Insolation is caused by or permitted by Site Host ("Insolation Reduction"), Service Provider shall be excused and released from its obligations under the Performance Guaranty during any period of Insolation Reduction.

- k. **Data Line.** Site Host shall provide Service Provider a high speed internet data line during the Term to enable Service Provider to record the electric energy generated by the System. If Site Host fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Service Provider may reasonably estimate the amount of electric energy that was generated and invoice Site Host for such amount in accordance with Section 4.
- l. **Breakdown Notice.** Site Host shall notify Service Provider within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Site Host shall notify Service Provider immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Site Host and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- m. **No Set-Off.** Site Host is not entitled to reduce or set-off against Monthly Fee or other amounts due to Service Provider or to anyone to whom Service Provider assigns this Agreement whether Site Host's claim arises out of this Agreement, any statement by Service Provider, Service Provider's liability or any third party's liability, strict liability, negligence or otherwise.

9. **Change in Law.**

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

If any Change in Law occurs that has a material adverse effect on the cost to Service Provider of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Site Host from Service Provider 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 Service Provider shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

- 10. **Relocation of System.** If Site Host ceases to conduct business operations at and/or vacates the Facility prior to the expiration of the Term, Site Host shall have the option to provide Service Provider with a mutually agreeable substitute premises located within the same Utility district as the terminated System. Site Host shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Site Host shall execute an amended agreement that shall have all of the same terms as this Agreement except for the

(i) Effective Date; (ii) Site Lease, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Site Host shall also provide any new Site Host, owner, Service Provider or mortgagee consents or releases required by Service Provider or Service Provider's Financing Parties in connection with the substitute facility. Site Host shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Service Provider in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refileing the security interests of Service Provider's Financing Parties in the System. Service Provider shall reasonably estimate the amount of Environmental Attributes and Environmental Incentives that would have been generated by the System during the period of time the System is not in operation due to the relocation and shall invoice Site Host for any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. Service Provider shall remove the System from the vacated Facility prior to the termination of Site Host's ownership, lease or other rights to use such Facility. Service Provider will not be required to restore the Facility to its prior condition but shall promptly pay Site Host for any damage caused by Service Provider during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Service Provider shall have the right to make an adjustment to the Monthly Fee to compensate Service Provider for the value of any reduction in revenue Service Provider incurs as a result in decreased production of Environmental Incentives and/or Environmental Attributes and reduced Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) receive as a result of the relocation. If Site Host is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Site Host.

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

Upon the expiration or earlier termination of this Agreement (provided Site Host does not exercise its purchase option), Service Provider shall, at its expense (except as otherwise provided in Section 12(b)(iii)(C)), remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term ("**Return Date**"). Such removal shall be at Service Provider's expense unless the termination is due to a Site Host default. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Service Provider's removal of the System affect the integrity of Site Host's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Service Provider shall leave the Facility in neat and clean order. If Service Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Site Host shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Service Provider's cost. Site Host 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.

- a. **Inspection of Equipment.** Prior to the removal of the System, Service Provider shall inspect the System to determine if the System has been damaged by Site Host. If the results of such inspection evidence that the System, or any component thereof, has been damaged by Site Host, Site Host shall pay to Service Provider within ten (10) days of demand, the estimated cost ("**Estimated Cost**") of servicing or repairing the System or component thereof. The Estimated Cost shall be determined by Service Provider by obtaining two quotes for such service or repair work and taking their average.
- b. **Holdover of Equipment.** If Site Host fails to permit Service Provider to retrieve the System on the Return Date, Service Provider shall be entitled to damages equal to the higher of (i) the monthly charges for the System, pro-rated on a per diem basis, for each day the System is retained beyond the Return Date; or (ii) the daily fair market Monthly Fee for the System on the Return

Date. Such damages for retention of the System after the Return Date shall not be interpreted as an extension or reinstatement of the Term.

- c. **Retention of Rights.** All of Service Provider's rights contained in this Section 11 shall survive the expiration or other termination of this Agreement.

12. Measurement.

Service Provider shall install one or more meter(s), as Service Provider deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Service Provider shall maintain the meter(s) in accordance with industry standards.

13. Default, Remedies and Damages.

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

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Site Host loses its rights to occupy and enjoy the Premises;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- vi. Site Host prevents Service Provider from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Site Host’s obligations to make payments that otherwise would have been due under this Agreement.

- b. **Remedies.**

- i. 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 (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. 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.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. Site Host. If Site Host is the Defaulting Party and Service Provider terminates this Agreement, the Termination Payment to Service Provider shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) the value of any Environmental Attributes or Environmental Incentives that would have accrued or would otherwise have been assigned to Service Provider during the remainder of the Term pursuant to the terms of this Agreement (Service Provider shall furnish Site Host with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c) if Service Provider evidences costs are a result of Site Host's default, (2) the net present value (using a discount rate of five and one half percent (**5.5%**)) of the remaining unpaid Monthly Fee over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Site Host to Service Provider. The Parties agree that actual damages to Service Provider in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Site Host would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Service Provider as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
 - B. Service Provider. If Service Provider is the Defaulting Party and Site Host terminates this Agreement, the Termination Payment to Site Host shall be equal to the sum of (1) the net present value (using a discount rate of five and one-half percent (**5.5%**)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the aggregate Monthly Fee for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Site Host in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Site Host, and (4) any and all other amounts previously accrued under this Agreement and then owed by Service Provider to Site Host. The Termination Payment shall not be less than zero.

- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Service Provider shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations, and Warranties and Covenants.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. Site Host's Representations and Warranties and Covenants. Site Host represents and warrants to Service Provider the following as of the Effective Date and covenants that throughout the Term:
- i. Site Lease. Site Host has title to or a leasehold or other property interest in the Premises. Site Host has the full right, power and authority to grant the Site Lease contained in Section 8(a). Such grant of the Site Lease does not violate any law, ordinance, rule or other governmental restriction applicable to Site Host or the Premises or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Site Host is bound or that affects the Premises or the Facility. If Site Host does not own the Premises or Facility, Site Host has obtained all required consents from the owner of the Premises and/or Facility to grant the Site Lease and enter into and perform its obligations under this Agreement.
 - ii. Other Agreements. Neither the execution and delivery of this Agreement by Site Host nor the performance by Site Host 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 Site Host is a party or by which Site Host or the Facility is bound.
 - iii. Accuracy of Information. All information provided by Site Host to Service Provider, as it pertains to the Facility's physical configuration, Site Host's planned use of the Facility, and Site Host's estimated electricity requirements, is accurate in all material respects.
 - iv. Site Host Status. Site Host is not a public electric utility and does not sell electricity pursuant to oversight from any utility commission.
 - v. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.

- vi. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

- c. Site Host Tax Representations. Site Host hereby acknowledges that on the Commercial Operation Date, the Service Provider intends for the System to qualify for the Tax Credits, and Site Host hereby represents and warrants that at no time during the Term of this Agreement will Site Host take or omit to take any action whether or not such act or omission is otherwise permitted by this Agreement which will result in the disqualification of the System or disallowance or recapture of all or any portion of the Tax Credits. If as a result of a breach of any representation, warranty or covenant of the Site Host contained in this Agreement (i) tax counsel of Service Provider reasonably determines that Service Provider is not entitled to claim on its Federal income tax return all or any portion of the Tax Credits with respect to the System, or (ii) any of the Tax Credits claimed by the Service Provider (or any partner in the Service Provider) is disallowed or adjusted by the Internal Revenue Service, or (iii) any Tax Credit is recalculated or recaptured (any determination, disallowance, adjustment, recalculation or recapture being a "Loss"), the Site Host shall pay to Service Provider as additional Monthly Fee an amount that shall cause Service Provider's after-tax economic yield and cash flow to equal the after-tax economic return that would have been realized by Service Provider if such Loss had not occurred. Notwithstanding the foregoing, Site Host shall not be responsible for Service Providers' failure to obtain any Tax Credit due to Service Providers' or Service Provider's tax counsel's error or omission in pursuing and filing for tax credits.

- d. Disclaimer. UNDER THIS AGREEMENT SERVICE PROVIDER DOES NOT MAKE, HAS NOT MADE, NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE SYSTEM UNDER THIS AGREEMENT OR ANY COMPONENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO CONDITION, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OR TITLE., WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL NOT APPLY. All such risks, as between the Parties, are to be borne by Site Host. To the extent permitted by state law, the remedies set forth in this Agreement shall be Site Host'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. The Performance Guaranty that Service Provider will provide to Site Host is a separate contract from this Agreement. No rights provided to Site Host by the Performance Guaranty may be asserted under this Agreement, and any claim thereunder must be made independently of this Agreement and will not affect Site Host's obligations under this Agreement.

15. System and Facility Damage and Insurance.

a. System and Facility Damage.

- i. Service Provider's Obligations. If the **System** is damaged or destroyed other than by Site Host's negligence or willful misconduct, Service Provider shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Service Provider shall not be required to restore the System, but may instead (A) either agree to pay for the cost of such restoration of the System or (B) terminate this Agreement and remove the System "AS-IS".

- ii. Site Host's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Service Provider's negligence or willful misconduct, such that the operation of the System and/or Site Host's ability to accept the electric energy produced by the System are materially impaired or prevented, Site Host shall

promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term, Site Host may elect either (A) to restore the Facility or (B) to pay to Service Provider the net present value (using a discount rate of five and one half percent (5.5%)) of the remaining unpaid Monthly Fee over the Term post-termination, had the Term remained effective for the full Initial Term and all costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

- b. Insurance Coverage.** At all times during the Term, Service Provider and Site Host shall maintain the following insurance:
- i. Service Provider's Insurance. Service Provider shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
 - ii. Site Host's Insurance. Site Host shall maintain commercial general liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate or evidence that Site Provider, as a metropolitan form of government, is self-insured in an adequately funded Self-Insurance Program, up to the limits as set out by statute.
- c. Policy Provisions.** Any insurance policy provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.
- d. Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. Ownership; Option to Purchase.

- a. Ownership of System.** Throughout the Term (except as otherwise permitted in), Service Provider shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Service Provider and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Service Provider and Site Host agree that the Service Provider (or the designated assignee of Service Provider permitted under Section 19) 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. Site Host covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Site Host shall provide a disclaimer or release from such lienholder. If Site Host is the fee owner of the Premises, Site Host

consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Site Host is not the fee owner, Site Host will obtain such consent from such owner. Upon request, Site Host agrees to deliver to Service Provider a non-disturbance agreement in a form reasonably acceptable to Service Provider from the owner of the Facility (if the Facility is leased by Site Host), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Site Host does not own the Premises or Facility, Site Host shall provide to Service Provider immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Site Host's lease of the Premises and/or Facility.

- b. Option to Purchase.** At the end of the sixth, fifteenth, twentieth and twenty-fifth Contract Years, and at the end of the Initial Term and each Additional Term, so long as Site Host is not in default under this Agreement, Site Host may purchase the System from Service Provider on any such date for a purchase price equal to the Fair Market Value of the System. Site Host must provide a notification to Service Provider of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Service Provider shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Service Provider shall assign to Site Host any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- c. Determination of Fair Market Value.** "Fair Market Value" means, in Service Provider's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of five and one half percent (5.5%)) of all associated future income streams expected to be received by Service Provider arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected Monthly Fees, Environmental Attributes, and Tax Credits and factoring in future costs and expenses associated with the System avoided. Service Provider shall determine Fair Market Value within thirty (30) days after Site Host has exercised its option to Purchase the System. Service Provider shall give written notice to Site Host of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Site Host reasonably objects to Service Provider's determination of Fair Market Value within thirty (30) days after Service Provider has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Parties fail to reach an agreement on the Fair Market Value, Site Host may withdraw its request to purchase the System. Upon purchase of the System, Site Host will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Service Provider shall have no further liabilities or obligations hereunder.

17. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 15.c.i. Notwithstanding any other provisions of this Agreement, Site Host shall only have obligations to indemnify Service Provider under this Section to the extent permitted by applicable law, and the Parties acknowledge that such obligations may be limited or prohibited thereunder.
- c. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties acknowledge that Site Host cannot be bound by any settlement absent prior approval of the Metropolitan Council. The Indemnifying Party shall have no liability under this Section 17(c) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- i. **Environmental Indemnification.** Service Provider shall indemnify, defend and hold harmless all of Site Host’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(i)(i)) to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Only to the fullest extent permitted by applicable law, Site Host shall indemnify, defend and hold harmless all of Service Provider’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.
- ii. “**Hazardous Substance**” means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter

prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

d. Limitations on Liability.

- i. No Consequential Damages. To the extent permitted by state law, except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Service Provider is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Site Host, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (2) in the event that Service Provider is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Site Host causes Service Provider to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages. The Parties further agree that (1) Site Host's reasonably expected cost of electric energy from the Utility over the aggregate Monthly Fee for the remainder of the Initial Term or the then current Additional Term, as applicable; and; (2) any third-party System removal costs incurred by Site Host shall be direct and not indirect or consequential damages.
- ii. Actual Damages. . with respect to indemnification for third party claims pursuant to Section 26 and damages that result from the willful misconduct of Service Provider, Service Provider's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Site Host under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Service Provider must be brought within one (1) year after the cause of action accrues.

18. Force Majeure.

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused

obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Site Host's ability to make payment.
- d. If a Force Majeure event continues for a period of two hundred seventy (270) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. **Assignment and Financing.**

- a. **Assignment and Sublease.** SITE HOST SHALL NOT ENCUMBER THE SYSTEM OR ANY PART THEREOF, SERVICE PROVIDER'S TITLE OR SITE HOST'S RIGHTS UNDER THIS AGREEMENT. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Service Provider may, without the prior written consent of Site Host, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Service Provider, (iii) assign this Agreement and the System to any entity through which Service Provider is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Service. In the event of any such assignment, the Service Provider shall be released from all its liabilities and other obligations under this Agreement, provided that Service Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Service Provider's obligations hereunder by the assignee. However, any assignment of Service Provider's right and/or obligations under this Agreement, shall not result in any change to Site Host's rights and obligations under this Agreement. Service Provider shall provide notice to Site Host upon any assignment contemplated by this Section A. Site Host's consent to any other assignment shall not be unreasonably withheld if Site Host 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 Service Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Service Provider in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Service Provider has transferred the ownership interest in the System, subject to a leaseback of the System from such person. 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. In connection with an assignment pursuant to Section 19(a)(i)-(iv), Site Host agrees to execute any consent, estoppel or acknowledgement in

form and substance reasonably acceptable to such Financing Parties; provided however that any such document does not materially impair or reduce Site Host's rights to, or Service Provider's provision of, the Solar Services.

- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Service Provider or its affiliates by Financing Parties, that such Financing Parties may require that Service Provider or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Site Host agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Site Host’s business (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, “**Representatives**”), and affiliates, lenders, and potential assignees of this Agreement, provided and on condition that such potential assignees shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially, and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.
- i. Notwithstanding the above or any other provisions of this Agreement, the Parties acknowledge i) that Site Host as a Metropolitan Government, is subject to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 et seq, and ii) any conflict between the terms of this Section 20 (Confidentiality) and the Tennessee Open Records Act shall be resolved in favor of the Tennessee Public Records Act, and iii) the Tennessee Public Records Act grants Tennessee citizens the right to access state, county and municipal public records. “Public Records” are defined as “all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” Unless otherwise exempt by law from the purview of the Public Records Act, Site Host will notify Service Provider prior to disclosure mandated by the Tennessee Public Records Act.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority

under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

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

22. Miscellaneous Provisions

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- c. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 14(c) (Disclaimer), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (Error! Reference source not found.) (Arbitration and Attorneys' Fees), Section 22(b) (Notices), Section 22(f) (Comparative Negligence), Section 22(g) (Non-Dedication of Facilities), Section 22(i) (No Partnership) Section 22(j) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(k) (No Third Party Beneficiaries).
- d. **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.
- e. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this

Agreement); 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 Site Host or Service Provider 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.

- f. **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.
- g. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Site Host not shall knowingly take any action that would subject the Service Provider, or Service Provider's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Site Host shall not assert in any proceeding before a court or regulatory body that Service Provider is a public utility by virtue of such other Party's performance under this agreement. If Service Provider is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Service Provider does not become subject to any such regulation provided however that any such restructuring shall not materially impair or reduce Site Host's rights to, or Service Provider's provision of, the Solar Services.
- h. **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.
- i. **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.
- j. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or

invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- k. **No Third Party Beneficiaries.** Except for assignees, Financing Parties, and Successor Providers permitted under Section 19, 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.

Section 5 – Solar Services Agreement
Form of Site Lease

Site Lease Agreement

This SITE LEASE AGREEMENT (this “**Agreement**”) is made and entered into this [_____], 2021 (the “**Effective Date**”), by and between LightWave Solar, LLC (“**Lessee**”) and the Metropolitan Government of Nashville and Davidson County (“**Lessor**”).

Recitals

A. Lessor is the owner of those certain parcels or tracts of ground in Davidson County, Tennessee, identified as [Parcel 1, Parcel 2, and Parcel 3] and more particularly described by metes and bounds on **Attachment A** attached hereto and incorporated herein (all of which parcels are referred to herein as the “**Premises**”).

B. Lessor and Lessee entered into a certain Solar Services Agreement and related Goods and Services Contract (the “**Solar Services Agreement**”) pursuant to which the Lessee has agreed to design, construct, install, operate, manage and administer a multi-site solar photovoltaic system (the “**System**”) on those certain portions of the Premises identified in **Attachment B** hereto (the “**Leased Premises**”) for the purpose of providing electric energy to Lessee.

C. Lessor desires to grant to Lessee the rights described herein for the purposes of designing, installing, operating, maintaining, managing and removing the System.

Agreement

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth below, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged and confirmed by Lessor, Lessor and Lessee hereby agree as follows:

1. **Grant of Access.** Lessor hereby grants and permits Lessee, its successors and assigns, access for the period of time set forth herein, across, over, under and above the Leased Premises i) in order to construct, install, alter, protect, repair, maintain, replace, operate, maintain and remove the System, including any related interconnection equipment and any facilities or equipment appurtenant thereto as Lessee may from time to time require, and ii) as reasonably necessary to provide access to and services reasonably required for Lessee’s performance under the Solar Services Agreement. The rights granted hereunder shall run with and burden the Premises for the term of this Agreement.
2. **Term.** This Agreement shall be for a period commencing on the Effective Date and expiring on the date that is the earlier of (a) the thirtieth (30th) anniversary of the System’s Commercial Operation Date (as such term is defined in the Solar Services Agreement), and (b) one hundred twenty (120) days following expiration of the term of the Solar Services Agreement, and (c) any earlier termination of the Solar Services Agreement due to default by Lessee thereunder. No delay or interruption by Lessee in the use or enjoyment of any right hereby granted shall result in the loss, limitation or abandonment of any of the right, title, interest, or estate granted hereby.
3. **Obstructions.** In addition to the rights afforded Lessee under the Solar Services Agreement, Lessee may from time to time remove structures, trees, bushes, or other obstructions within such portions of the Leased Premises, and may level and grade such portions of the Leased Premises, to the extent reasonably necessary to carry out the purposes set forth herein; provided that Lessor gives its prior written consent to such removal, leveling or grading, such consent not to be unreasonably withheld, delayed or conditioned. Lessor covenants for itself, its heirs, successors and assigns that:

- a. Lessor will not build or place, or allow to be built or placed, any structure or obstruction of any kind within such portions of the Leased Premises on which is located any portion of the System, including any related interconnection equipment; and
 - b. if such a structure or obstruction is built or placed within any portion of the Leased Premises on which is located any portion of the System, including any related interconnection equipment, Lessor will remove the same at the request of the Lessee at no cost to the Lessee. Lessee may erect a fence on such portions of the Leased Premises on which any portion of the System is located in order to exclude Lessor and others from accessing such areas provided that Lessor gives its prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.
4. **Reservation of Rights.** Lessor reserves the right to use or authorize others to use the Premises in any manner not inconsistent with or which will not unreasonably interfere with the rights granted herein, provided, however, that Lessor shall not, nor shall permit others to, disturb the System, including any related interconnection equipment, in any way without prior written approval of the Lessee.
5. **Title.** Lessor represents and warrants to Lessee that (a) Lessor holds fee simple title to the Premises, free and clear of all liens and any other encumbrances, and (b) no lien or other encumbrance to which the Premises is subject would reasonably be expected to adversely impact Lessee's rights hereunder or under the Solar Services Agreement. Lessor further represents and warrants to Lessee that Lessor has the right to execute and deliver this Agreement and to grant to Lessee the rights hereunder, and that such grant does not, and will not, violate or breach Lessor's organizational documents, any law, rule or regulation, or any contract, agreement or arrangement to which Lessor is a party or by or to which any of Lessor's assets or properties, including the Premises or the Leased Premises, is bound or subject. In the event that, after the date of this Agreement, Lessor duly grants a mortgage for additional value (the "**Subsequent Mortgage**"), Lessor shall, prior to and as a condition to the effectiveness of such grant of a mortgage, cause the mortgagee under the Subsequent Mortgage to execute and deliver to the Lessee an agreement, in customary form and in form and substance reasonably acceptable to Lessee, acknowledging the subordination of the Subsequent Mortgage to the grant of the easement pursuant to this Agreement (the "**Subordination Agreement**").
6. **Recordation; Possession.** This Agreement may be recorded against the Property by Lessee at Lessee's sole cost and expense. Lessor covenants and agrees, for itself and its assigns and successors, that the Lessee shall be entitled to exercise its rights under this Agreement upon execution and delivery of this Agreement by the Parties hereto, whether or not this Agreement is recorded.
7. **Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Tennessee, without regard to conflicts of law principles.
8. **Severability.** All provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.
9. **Binding Effect; Successors and Assigns.** Lessee shall have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and interests arising in this Agreement in accordance with the terms of the Solar Services Agreement. Without limiting the generality of the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and assigns. This Agreement may be amended, modified or terminated only by written instrument, executed and acknowledged by the Parties hereto.
10. **Headings.** The headings used herein are for convenience only and are not to be used in interpreting this Agreement.
11. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereto and supersedes any prior written or oral agreements with respect to the matters described herein.

12. **Amendments; Acknowledgments.** Lessor shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee's lender, any assignee of rights under this Agreement, or the lender of any assignee hereunder.
13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Site Lease Agreement has been entered into by the Parties by their signatures below as of the Effective Date first mentioned above.

Lessor:
Metropolitan Government of Nashville & Davidson County

Lessee:
LightWave Solar, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved by Lessor as to Availability of Funds:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Approved by Lessor as to Form and Legality:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Approved by Lessor's Director of Property Administration:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**Attachment A
to Site Lease Agreement**

Premises Description:

[Attach legal description from Project Site survey]

**Attachment B
to Site Lease Agreement**

Leased Premises description:

[Attach legal description from Project Site survey]

Section 6 – Solar Services Agreement
Form of Memorandum of Lease

NOTICE OF GRANT OF INTEREST IN REALTY

In accordance with the provisions of [____], notice is hereby given of that Solar Services Agreement dated as of [____] for provision of solar construction and asset management services (the “**Solar Services Agreement**”), such Solar Services Agreement includes the grant of Lease to Service Provider, pursuant to the terms of the Solar Services Agreement. This notice may be executed in counterparts by the Parties to the Solar Services Agreement.

Parties to the Agreement:

Service Provider: [____] [____]
[____]
[____]

Site Host : [____]
[____]
[____]

Date of Execution of Solar Agreement: [____]

Description of Premises: See **Section 5, Attachment A**

TERM OF AGREEMENT:

The term of the Solar Services Agreement shall be until the last day of the calendar month in which the thirtieth (30th) anniversary of the Commercial Operation Date (as that term is defined in the Solar Services Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Services Agreement.

[Signature Pages and Notary Pages follow]

Section 6
Attachment A
Description of the Premises

[Service Provider to Complete]

Section 7 – Solar Services Agreement
Form of Performance Guaranty Agreement

In consideration for Purchaser's entering into the Solar Services Agreement between LightWave Solar, LLC ("Service Provider") and Metropolitan Government of Nashville and Davidson County ("Site Host") related to the System at the Premises (the "Solar Services Agreement"), this Performance Guaranty (this "**Guaranty**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Service Provider below (the "**Effective Date**").

Site Host:		Service Provider:	
Name and Address	Metropolitan Government of Nashville and Davidson County Purchasing Agent, Procurement Division Department of Finance PO Box 196300 Nashville, TN 37219-6300	Name and Address	LightWave Solar, LLC 3026 Owen Drive, STE 104 Antioch, TN 37013 Attention: Christopher J. Koczaja
Phone	None	Phone	(615) 641-4050
E-mail	None	E-mail	(615) 641-2219
Project Name	Metro Water 2021 Solar Project		ckoczaja@lightwavesolar.com

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

1. **Guaranty.** Guarantor guarantees that during the term of the Lease the System will generate not less than ninety percent (90%) of the projected generation of the System as set forth in **Table 1.A** below (such figure, the "**Guaranteed kWh**").

Table 1.A, projected production values:

Contract Year	Pre-Adjustment Annual KWh (90% of projected generation)
Year 1	4,951,375
Year 2	4,852,347
Year 3	4,830,512
Year 4	4,808,775
Year 5	4,787,135
Year 6	4,765,594
Year 7	4,744,148
Year 8	4,722,800
Year 9	4,701,547
Year 10	4,680,390
Year 11	4,659,328
Year 12	4,638,362
Year 13	4,617,489
Year 14	4,596,710
Year 15	4,576,025
Year 16	4,555,433

Year 17	4,534,933
Year 18	4,514,526
Year 19	4,494,210
Year 20	4,473,986
Year 21	4,453,853
Year 22	4,433,811
Year 23	4,413,859
Year 24	4,393,997
Year 25	4,374,224
Year 26	4,354,539
Year 27	4,334,945
Year 28	4,315,437
Year 29	4,296,018
Year 30	4,276,686

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Service Provider (the “**Actual kWh**”) is *less* than the Guaranteed kWh on a cumulative basis for all Contract Years through that Contract Year, then Service Provider shall pay Site Host an amount equal to (i) the cumulative difference between the Guaranteed kWh and the Actual kWh from the beginning of the first year through the end of that Contract Year, divided by (ii) the Guaranteed kWh for that Contract Year, multiplied by (iii) \$373,091.88, the total of which is reduced by (iv) the sum of cumulative performance guaranty payments made by Service Provider in all previous Contract Years.

C. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), (i) Service Provider will deliver a statement to Site Host detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

D. If at the end of a Contract Year the Actual kWh is *greater* than the Guaranteed kWh, this surplus will be carried over and will be used to offset any deficits that may occur in any subsequent Contract Years.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Service Provider or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Service Provider, including a grid supply voltage outside of the standard range specified by the utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the utility or grid operator.

B. Site Hosts’s failure to perform, or breach of, Site Host’s obligations under the Solar Services Agreement.

C. Insolation Reduction, as described in [Section 8(j)] of the Agreement.

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

4. **Incorporation of Solar Services Agreement Provisions.** Section 18 (*Force Majeure*), Section 19 (*Assignment and Financing*) and Section 22 (*Miscellaneous Provisions*) of the Solar Services Agreement and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

[Signature Page Follows]

Site Host:

Metropolitan Government of Nashville and Davidson County

Service Provider:

LightWave Solar, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Availability of Funds:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form and Legality:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

COMMENTS/REMARKS

General Liability:

Additional Insured status, waiver of subrogation and primary/noncontributory status applies when required by written contract and only as per forms GA233 09 17 and GA472 09 17.

Business Automobile Liability:

Additional Insured status applies when required by written contract and only as per form AA4171 11 05. Coverage is noncontributory for additional insureds when required by written contract and only as per form AA4174 11 05.

Workers Compensation & Employers Liability:

Waiver of subrogation applies when required by written contract to coverage in Alabama, Mississippi and Tennessee.

Excess/Umbrella Liability:

The Umbrella Liability policy provides excess limits over the scheduled underlying primary Commercial General Liability, Business Automobile Liability, and Employers Liability policies' limits, subject to the Umbrella policy's terms, conditions and exclusions.

"Automatic Non-Contributory Coverage Endorsement-Where Required by Written Contract" form US4096 10 10 is attached to the policy.

Subject to all of the terms, conditions, exclusions and definitions of the above referenced policies as issued by the carrier(s).

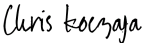
Certificate Of Completion

Envelope Id: F6984F12BB3A4E1EBB413B073E12717C	Status: Sent
Subject: URGENT Agreement No 6485668 Lightwave Solar, LLC (Water Services)	
Source Envelope:	
Document Pages: 63	Signatures: 3
Certificate Pages: 15	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Procurement Resource Group
Time Zone: (UTC-06:00) Central Time (US & Canada)	730 2nd Ave. South 1st Floor
	Nashville, TN 37219
	prg@nashville.gov
	IP Address: 170.190.198.185


Record Tracking

Status: Original	Holder: Procurement Resource Group	Location: DocuSign
1/11/2021 9:43:05 AM	prg@nashville.gov	

Signer Events

Signer Events	Signature	Timestamp
Chris Koczaja ckoczaja@lightwavesolar.com CEO LightWave Solar, LLC Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 68.53.115.135	Sent: 1/11/2021 10:15:59 AM Resent: 1/11/2021 10:17:36 AM Viewed: 1/11/2021 10:18:05 AM Signed: 1/11/2021 12:17:17 PM

Electronic Record and Signature Disclosure:
Accepted: 1/11/2021 10:18:05 AM
ID: e0141948-8816-43e3-9779-aec8f4d1ff09

Kevin Crumbo/tlo talia.lomaxodneal@nashville.gov Director of Finance Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 170.190.198.185	Sent: 1/11/2021 12:17:19 PM Viewed: 1/11/2021 1:04:22 PM Signed: 1/11/2021 1:05:00 PM
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Electronic Record and Signature Disclosure:
Accepted: 1/11/2021 1:04:22 PM
ID: 0d1ba4d8-c391-4fc4-b448-480b81b993ac

Tara Ladd tara.ladd@nashville.gov Assistant Metropolitan Attorney Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 170.190.198.185	Sent: 1/11/2021 1:05:03 PM Viewed: 1/11/2021 1:06:15 PM Signed: 1/11/2021 1:06:40 PM
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Electronic Record and Signature Disclosure:
Accepted: 1/11/2021 1:06:15 PM
ID: 5b5e217e-a11a-4314-8167-f5a9d9227f5d

Procurement Resource Group prg@nashville.gov Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None)		Sent: 1/11/2021 1:06:44 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Tara Ladd tara.ladd@nashville.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 1/11/2021 1:06:42 PM
Sally Palmer sally.palmer@nashville.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 1/11/2021 11:58:33 AM ID: f931b20c-ac14-4226-9ca0-93fee29f9a6b	COPIED	Sent: 1/11/2021 1:06:43 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/11/2021 10:15:59 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

1. ACCEPTANCE OF TERMS AND CONDITIONS These Terms and Conditions govern your ("Subscriber" or "you") use of DocuSign's on-demand electronic signature service (the "Subscription Service"), as accessed either directly through DocuSign.com, DocuSign.net, or through a DocuSign affiliate's™ web page offering a Service Plan (collectively, the "Site"). By depositing any document into the System (as defined below), you accept these Terms and Conditions (including your corresponding Service Plan, the DocuSign.com Terms of Use, and all policies and guidelines referenced and hereby incorporated into these Terms and Conditions) and any modifications that may be made to the Terms and Conditions from time to time. If you do not agree to these Terms and Conditions, you should not use the Subscription Service or visit or browse the Site. These Terms and Conditions constitute a binding legal agreement between you and DocuSign, Inc. ("DocuSign," "we," "us," and "our"). Please read them carefully and print a copy for your future reference.

2. MODIFICATION OF TERMS AND CONDITIONS We reserve the right to modify these Terms and Conditions at any time and in any manner at our sole discretion by: (a) posting a revision on the Site; or (b) sending information regarding the amendment to the email address you provide to us. **YOU ARE RESPONSIBLE FOR REGULARLY REVIEWING THE SITE TO OBTAIN TIMELY NOTICE OF ANY AMENDMENTS. YOU SHALL BE DEEMED TO HAVE ACCEPTED SUCH AMENDMENTS BY CONTINUING TO USE THE SUBSCRIPTION SERVICE FOR MORE THAN 20 DAYS AFTER SUCH AMENDMENTS HAVE BEEN POSTED OR INFORMATION REGARDING SUCH AMENDMENTS HAS BEEN SENT TO YOU.** You agree that we shall not be liable to you or to any third party for any modification of the Terms and Conditions.

3. DEFINITIONS "Account" means a unique account established by Subscriber to enable its Authorized Users to access and use the Subscription Service. "Authorized User" means any employee or agent of Subscriber, identified by a unique email address and user name, who is registered under the Account, provided that no two persons may register, access or use the Subscription Service as the same Authorized User. "Contract" refers to a contract, notice, disclosure, or other record or document deposited into the System by Subscriber for processing using the Subscription Service. "Envelope" means an electronic record containing one or more eContracts consisting of a single page or a group of pages of data uploaded to the System. "Seat" means an active Authorized User listed in the membership of an Account at any one time. No two individuals may log onto or use the Subscription Service as the same Authorized User, but Subscriber may unregister or deactivate Authorized Users and replace them with other Authorized Users without penalty, so long as the number of active Authorized Users registered at any one time is equal to or less than the number of Seats purchased. "Service Plan" means the right to access and use the Subscription Service for a specified period in exchange for a periodic fee, subject to the Service Plan restrictions and requirements that are used to describe the selected Service Plan on the Site. Restrictions and requirements may include any or all of the following: (a) number of Seats and/or Envelopes that a Subscriber may use in a month or year for a fee; (b) fee for sent Envelopes in excess of the number of Envelopes allocated to Subscriber under the Service Plan; (c) per-seat or per-user restrictions; (d) the license to use DocuSign software products such as DocuSign Connect Express in connection with the Subscription Service; and (e) per use fees. "Specifications" means the technical specifications set forth in the "Subscription Service Specifications" available at <http://docusign.com/company/specifications>. "Subscription Service" means DocuSign's™ on-demand electronic signature service, as updated from time

to time, which provides on-line display, certified delivery, acknowledgement, electronic signature, and storage services for eContracts via the Internet. "System" refers to the software systems and programs, communication and network facilities, and hardware and equipment used by DocuSign or its agents to provide the Subscription Service. "Term" means the period of effectiveness of these Terms and Conditions, as specified in Section 12 below. "Transaction Data" means the metadata associated with an Envelope (such as transaction history, image hash value, method and time of Envelope deletion, sender and recipient names, email addresses and signature IDs) and maintained by DocuSign in order to establish the digital audit trail required by the Subscription Service.

4. SUBSCRIPTION SERVICE

During the term of the Service Plan and subject to these Terms and Conditions, Subscriber will have the right to obtain an Account and register its Authorized Users, who may access and use the Subscription Service, and DocuSign will provide the Subscription Service in material conformance with the Specifications. You must be 18 years of age or older to register for an Account and use the Subscription Service. Subscriber's right to use the Subscription Service is limited to its Authorized Users, and Subscriber agrees not to resell or otherwise provide or assist with the provision of the Subscription Service to any third party. In addition, DocuSign's provision of the Subscription Service is conditioned on Subscriber's acknowledgement and agreement to the following: (a) The Subscription Service facilitates the execution of eContracts between the parties to those eContracts. Nothing in these Terms and Conditions may be construed to make DocuSign a party to any eContract processed through the Subscription Service, and DocuSign makes no representation or warranty regarding the transactions sought to be effected by any eContract; (b) Between DocuSign and Subscriber, Subscriber has exclusive control over and responsibility for the content, quality, and format of any eContract. All eContracts stored by DocuSign are maintained in an encrypted form, and DocuSign has no control of or access to their contents; (c) If Subscriber elects to use one or more of the optional features designed to verify the identity of the intended recipient of an eContract that DocuSign makes available to its subscribers ("Authentication Measures"), DocuSign will apply only those Authentication Measures selected by the Subscriber, but makes no representations or warranties about the appropriateness of any Authentication Measure. Further, DocuSign assumes no liability for: (A) the inability or failure by the intended recipient or other party to satisfy the Authentication Measure; or (B) the circumvention by any person (other than DocuSign) of any Authentication Measure; (d) Certain types of agreements and documents may be exempted from electronic signature laws (e.g. wills and agreements pertaining to family law), or may be subject to specific regulations promulgated by various government agencies regarding electronic signatures and electronic records. DocuSign is not responsible or liable to determine whether any particular eContract is subject to an exception to applicable electronic signature laws, or whether it is subject to any particular agency promulgations, or whether it can be legally formed by electronic signatures; (e) DocuSign is not responsible for determining how long any d to be retained or stored under any applicable laws, regulations, or legal or administrative agency processes. Further, DocuSign is not responsible for or liable to produce any of Subscriber's eContracts or other documents to any third parties; (f) Certain consumer protection or similar laws or regulations may impose special requirements with respect to electronic transactions involving one or more "consumers," such as (among others) requirements that the consumer consent to the method of contracting and/or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. DocuSign does not and is not responsible to: (A) determine whether any

particular transaction involves a “consumer”; (B) furnish or obtain any such consents or determine if any such consents have been withdrawn; (C) provide any information or disclosures in connection with any attempt to obtain any such consents; (D) provide legal review of, or update or correct any information or disclosures currently or previously given; (E) provide any such copies or access, except as expressly provided in the Specifications for all transactions, consumer or otherwise; or (F) otherwise to comply with any such special requirements; and (g) Subscriber undertakes to determine whether any “consumer” is involved in any eContract presented by Subscriber or its Authorized Users for processing, and, if so, to comply with all requirements imposed by law on such eContracts or their formation. (h) If the domain of the primary email address associated with the Account is owned by an organization and was assigned to Subscriber as an employee, contractor or member of such organization, and that organization wishes to establish a commercial relationship with DocuSign and add the Account to such relationship, then, if Subscriber does not change the email address associated with the Account, the Account may become subject to the commercial relationship between DocuSign and such organization and controlled by such organization.

5. RESPONSIBILITY FOR CONTENT OF COMMUNICATIONS As between Subscriber and DocuSign, Subscriber is solely responsible for the nature and content of all materials, works, data, statements, and other visual, graphical, video, and written or audible communications submitted by any Authorized User or otherwise processed through its Account, the Subscription Service, or under any Service Plan. Accordingly: (a) Subscriber will not use or permit the use of the Subscription Service to send unsolicited mass mailings outside its organization. The term “unsolicited mass mailings” includes all statutory or common definitions or understanding of those terms in the applicable jurisdiction, such as those set forth for “Commercial Electronic Mail Messages” under the U.S. CAN-SPAM Act, as an example only; and (b) Subscriber will not use or permit the use of the Subscription Service: (i) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (ii) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability (other than contractual liability of the parties under eContracts processed through the Subscription Service); (iii) in any manner that is likely to damage, disable, overburden, or impair the System or the Subscription Service or interfere with the use or enjoyment of the Subscription Service by others; or (iv) in any way that constitutes or encourages conduct that could constitute a criminal offense. DocuSign does not monitor the content processed through the Subscription Service, but in accordance with DMCA (Digital Millennium Copyright Act) safe harbors, it may suspend any use of the Subscription Service, or remove or disable any content that DocuSign reasonably and in good faith believes violates this Agreement or applicable laws or regulations. DocuSign will use commercially reasonable efforts to notify Subscriber prior to any such suspension or disablement, unless DocuSign reasonably believes that: (A) it is prohibited from doing so under applicable law or under legal process, such as court or government administrative agency processes, orders, mandates, and the like; or (B) it is necessary to delay notice in order to prevent imminent harm to the System, Subscription Service, or a third party. Under circumstances where notice is delayed, DocuSign will provide the notice if and when the related restrictions in the previous sentence no longer apply.

6. PRICING AND PER USE PURCHASES The prices, features, and options of the Subscription Service available for an Account depend on the Service Plan selected by Subscriber. Subscriber may also purchase optional services on a periodic or per-use basis. DocuSign may add or change the prices, features or options available with a

Service Plan without notice. Subscriber's usage under a Service Plan is measured based on the actual number of Seats as described in the Service Plan on the Site. Once a per-Seat Service Plan is established, the right of the named Authorized User to access and use the Subscription Service is not transferable; any additional or differently named Authorized Users must purchase per-Seat Service Plans to send Envelopes. Extra seats, users and/or per use fees will be charged as set forth in Subscriber's Service Plan if allowed by such Service Plan. If a Services Plan defines a monthly Envelope Allowance (i.e. # Envelopes per month allowed to be sent), all Envelopes sent in excess of the Envelope Allowance will incur a per-Envelope charge. Any unused Envelope Allowances will expire and not carry over from one billing period to another under a Service Plan. Subscriber's Account will be deemed to have consumed an Envelope at the time the Envelope is sent by Subscriber, regardless of whether Envelopes were received by recipients, or whether recipients have performed any actions upon any eContract in the Envelope. Powerforms are considered Envelopes within an Envelope Allowance Service Plan, and will be deemed consumed at the time they are "clicked" by any end user regardless of whether or not any actions are subsequently performed upon such Envelope. For Service Plans that specify the Envelope Allowance is "Unlimited," Subscriber is allowed to send a reasonable number of Envelopes from the number of Seats purchased. If DocuSign suspects that the number of Envelopes sent from a particular Seat or a group of Seats is abusive and/or unduly burdensome, DocuSign will promptly notify Subscriber, discuss the use-case scenario with Subscriber and any continued monitoring, additional discussions and/or information required to make a final determination on the course of action based on such information. In the event Subscriber exceeds, in DocuSign's sole discretion, reasonable use restrictions under a Service Plan, DocuSign reserves the right to transfer Subscriber into a higher-tier Service Plan without notice. If you misrepresent your eligibility for any Service Plan, you agree to pay us the additional amount you would have been charged under the most favorable pricing structure for which you are eligible. DocuSign may discontinue a Service Plan at any time, and with prior notice to you, may migrate your Account to a similar Service Plan that may carry a different fee. You agree to allow us to charge your credit card for the fees associated with a substitute Service Plan, even if those fees are higher than those you agreed to when you registered your Account. Optional asures, are measured at the time of use, and such charges are specific to the number of units of the service(s) used during the billing period. Optional services subject to periodic charges, such as additional secure storage, are charged on the same periodic basis as the Service Plan fees for the Subscription Service.

7. SUBSCRIBER SUPPORT DocuSign will provide Subscriber support to Subscriber as specified in the Service Plan selected by Subscriber, and that is further detailed on DocuSign's website.

8. STORAGE DocuSign will store eContracts per the terms of the Service Plan selected by Subscriber. For Service Plans that specify the Envelope storage amount is "Unlimited," DocuSign will store an amount of Envelopes that is not abusive and/or unduly burdensome, in DocuSign's sole discretion. Subscriber may retrieve and store copies of eContracts for storage outside of the System at any time during the Term of the Service Plan when Subscriber is in good financial standing under these Terms and Conditions, and may delete or purge eContracts from the System at its own discretion. DocuSign may, at its sole discretion, delete an uncompleted eContract from the System immediately and without notice upon earlier of: (i) expiration of the Envelope (where Subscriber has established an expiration for such Envelope, not to exceed 365 days); or (ii) expiration of the Term. DocuSign assumes no liability or responsibility for a party's failure or inability to electronically sign any eContract within such a period of time. DocuSign may retain Transaction Data for as long as it has a

business purpose to do so. 9. BUSINESS AGREEMENT BENEFITS You may receive or be eligible for certain pricing structures, discounts, features, promotions, and other benefits (collectively, "Benefits") through a business or government Subscriber's agreement with us (a "Business Agreement"). Any and all such Benefits are provided to you solely as a result of the corresponding Business Agreement and such Benefits may be modified or terminated without notice. If you use the Subscription Service where a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with that entity and/or its authorized agents. If you are enrolled in a Service Plan or receive certain Benefits tied to a Business Agreement with us, but you are liable for your own charges, then you authorize us to share enough account information with that entity and its authorized agents to verify your continuing eligibility for those Benefits and the Service Plan. 10. FEES AND PAYMENT TERMS The Service Plan rates, charges, and other conditions for use are set forth in the Site. Subscriber will pay DocuSign the applicable charges for the Services Plan as set forth on the Site. If you add more Authorized Users than the number of Seats you purchased, we will add those Authorized Users to your Account and impose additional charges for such additional Seats on an ongoing basis. Charges for pre-paid Service Plans will be billed to Subscriber in advance. Charges for per use purchases and standard Service Plan charges will be billed in arrears. When you register for an Account, you will be required to provide DocuSign with accurate, complete, and current credit card information for a valid credit card that you are authorized to use. You must promptly notify us of any change in your invoicing address or changes related to the credit card used for payment. By completing your registration for the Services Plan, you authorize DocuSign or its agent to bill your credit card the applicable Service Plan charges, any and all applicable taxes, and any other charges you may incur in connection with your use of the Subscription Service, all of which will be charged to your credit card. Each time you use the Subscription Service, or allow or cause the Subscription Service to be used, you reaffirm that we are authorized to charge your credit card. You may terminate your Account and revoke your credit card authorization as set forth in the Term and Termination section of these Terms and Conditions. We will provide you with one invoice in a format we choose, which may change from time to time, for all Subscription Service associated with each Account and any charges of a third party on whose behalf we bill. Payment of all charges is due and will be charged to your credit card upon your receipt of an invoice. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and/or prorations. If your Account is a qualified business account and is approved by us in writing for corporate billing, charges will be accumulated, identified by Account identification number, and invoiced on a monthly basis. You agree that we may (at our option) accumulate charges incurred during your monthly billing cycle and submit them as one or more aggregate charges during or at the end of each cycle, and that we may delay obtaining authorization from your credit card issuer until submission of the accumulated charge(s). This means that accumulated charges may appear on the statement you receive from your credit card issuer. If DocuSign does not receive payment from your credit card provider, you agree to pay all amounts due upon demand. DocuSign reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment. Your credit card issuer's agreement governs your use of your credit card in connection with the Subscription Service, and you must refer to such agreement (not these Terms and Conditions) with respect to your rights and liabilities as a cardholder. You are solely responsible for any and all fees charged to your credit card by the issuer, bank, or financial institution including, but not limited to, membership,

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Conditions. 12. TERM AND TERMINATION The term of these Terms and Conditions for each Account begins on the date you register for an Account and continues for the term specified by the Service Plan you purchase (the "Term"). You may terminate your Account at any time upon 10 days advance written notice to DocuSign following the Notice procedures set forth in these Terms and Conditions. Unless you terminate your Account or you set your Account to not auto renew, your Service Plan will automatically renew at the end of its Term (each a "Renewal Term"), and you authorize us (without notice) to collect the then-applicable fee and any taxes for the renewed Service Plan, using any credit card we have on record for you. Service Plan fees and features may change over time. Your Service Plan for a Renewal Term will be the one we choose as being closest to your Service Plan from the prior Term. For any termination (including when you switch your Account), you will be responsible for payment of all fees and charges through the end of the billing cycle in which termination occurs. If you terminate your annual Service Plan Account within the first 30 days of the Term, you may submit written request to DocuSign following the Notice procedures set forth in these Terms and Conditions, for a full refund of the prepaid fees paid by you to DocuSign. You will be limited to one refund. You agree that termination of an annual Service Plan after the first 30 days will not entitle you to any refund of prepaid fees. You will be in default of these Terms and Conditions if you: (a) fail to pay any amount owed to us or an affiliate of ours or any amount appearing on your invoice; (b) have amounts still owing to us or an affiliate of ours from a prior account; (c) breach any provision of these Terms and Conditions; (d) violate any policy applicable to the Subscription Service; (e) are subject to any proceeding under the Bankruptcy Code or similar laws; or (f) if, in our sole discretion, we believe that your continued use of the Subscription Service presents a threat to the security of other users of the Subscription Service. If you are in default, we may, without notice to you, suspend your Account and use of the Subscription Service, withhold refunds and terminate your Account, in addition to all other remedies available to us. We may require reactivation charges to reactivate your Account after termination or suspension. The following provisions will survive the termination of these Terms and Conditions and your Account: Sections 3, 9-11, and 15-23. 13. SUBSCRIBER WARRANTIES You hereby represent and warrant to DocuSign that: (a) you have all requisite rights and authority to use the Subscription Service under these Terms and Conditions and to grant all applicable rights herein; (b) the performance of your obligations under these Terms and Conditions will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements between you and third parties; (c) you will use the Subscription Service for lawful purposes only and subject to these Terms and Conditions; (d) you are responsible for all use of the Subscription Service in your Account; (e) you are solely responsible for maintaining the confidentiality of your Account names and password(s); (f) you agree to immediately notify us of any unauthorized use of your Account of which you become aware; (g) you agree that DocuSign will not be liable for any losses incurred as a result of a third party's use of your Account, regardless of whether such use is with or without your knowledge and consent; (h) you will not use the Subscription Service in any manner that could damage, disable, overburden or impair the System, or interfere with another's use of the Subscription Service by others; (i) any information submitted to DocuSign by you is true, accurate, and correct; and (j) you will not attempt to gain unauthorized access to the System or the Subscription Service, other accounts, computer systems, or networks under the control or responsibility of DocuSign through hacking, cracking, password mining, or any other unauthorized means. 14. DOCUSIGN WARRANTIES DocuSign represents and warrants that: (a) the Subscription Service as delivered to Subscriber

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