

**APPENDIX B**

**Form of SREC Transfer Agreement**

**SOLAR RENEWABLE ENERGY CREDIT**

**TRANSFER AGREEMENT**

**DELAWARE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT**

**2013 SREC PROCUREMENT PROGRAM**

**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**2013 SREC PROCUREMENT PROGRAM**

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**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**2013 SREC PROCUREMENT PROGRAM**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pertains to the sale and transfer by the Owner (as identified below) of solar renewable energy credits created by a solar power project (as described in more detail below, the "**Project**")<sup>1</sup> to SEU One, LLC (or any successor organization thereto, the "**SEU**").

**PART I  
PROJECT AND OWNER INFORMATION**

A. Owner:<sup>2</sup>

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_
- Attention: \_\_\_\_\_
- Email address: \_\_\_\_\_
- Tax ID number: \_\_\_\_\_
- Owner's other Eligible Energy Resources:<sup>3</sup> \_\_\_\_\_
- Owner GATS Account No.:<sup>4</sup> \_\_\_\_\_

B. Owner Representative (if one is designated):

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_

<sup>1</sup> A Project may be located at multiple locations, provided that the same legal entity owns, leases, controls or is the direct assignee of all of the SRECs created by the entire Project.

<sup>2</sup> The Owner is the legal entity that owns, leases, controls or is the direct assignee of all of the SRECs created by the Project.

<sup>3</sup> Required only if: (a) the Project has a nameplate capacity of less than 100 kW; and (b) no Owner Representative is designated.

<sup>4</sup> If the Owner has not established a GATS account as of the Bid Date, it must provide the SEU with such account number promptly after the account is established.

- Attention: \_\_\_\_\_
- Email address: \_\_\_\_\_
- Tax ID number: \_\_\_\_\_
- Other Eligible Energy Resources: \_\_\_\_\_

C. Payee (check one):

- Owner
- Owner Representative

D. Project:

- Street address:<sup>5</sup> \_\_\_\_\_  
(or parcel number if property does not have street address)
- City, state and zip code: \_\_\_\_\_
- Nameplate capacity: \_\_\_\_\_ kW<sup>6</sup>
- Tier designation (check one):
  - Tier N-1 Project (New system, less than or equal to 30 kW-DC)
  - Tier N-2 Project (New system, greater than 30 kW and less than or equal to 200 kW-DC)
  - Tier N-3 Project (New system, greater than 200 kW and less than or equal to 2,000 kW-DC)
  - Tier E-1 Project (Existing system, less than or equal to 30 kW-DC)
  - Tier E-2 Project (Existing system, greater than 30 kW and less than or equal to 2,000 kW-DC)
- Operational status (check one):
  - Project under development as of Bid Date

<sup>5</sup> If the Project is located at multiple locations, the street address or parcel number for each location must be provided. A separate page may be attached if necessary.

<sup>6</sup> All capacity (kW) references are to the nameplate rating of the Generation Unit (DC at STC), as designated by the solar module manufacturer.

- Operation Date has occurred as of Bid Date  
Operation Date: \_\_\_\_\_
- Commencement Date (check one):
  - June 1, \_\_\_\_\_
  - First day of the month following Execution Date
- Utility interconnection:  
\_\_\_\_\_ Interconnecting Utility
- Supplemental funding from public sources (check if applicable):<sup>7</sup>
  - Delaware Green Energy Program Grant  
Utility \_\_\_\_\_  
Amount: \_\_\_\_\_
  - Other grants from public sources (excluding grants in lieu of investment tax credits)  
Amount and type: \_\_\_\_\_  
Source: \_\_\_\_\_
- SREC credits (check if applicable):
  - The Project qualifies for a 10% credit on SREC output (if applicable, the "**Delaware Equipment Bonus**") because the Project is sited in the State of Delaware and a minimum of 50% of the cost of renewable energy equipment, inclusive of mounting components, is manufactured in Delaware.
  - The Project qualifies for a 10% credit on SREC output (if applicable, the "**Delaware Workforce Bonus**") because the Project is sited in the State of Delaware and is or will be constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents.
- Energy and SREC output  
Estimated first-year total energy output: \_\_\_\_\_ kWh (exclusive of any bonuses described below)<sup>8</sup>

<sup>7</sup> If the Project has received a Delaware Green Energy Program Grant, the Owner shall deliver a copy of the grant award simultaneously with this Agreement.

<sup>8</sup> An analysis of the estimated first-year energy output using PVWatts Solar PV Energy Calculator or other modeling technique acceptable to the SEU is attached as Exhibit A hereto.

Estimated first-year total SREC output \_\_\_\_\_ SRECs (exclusive of any bonuses described below)

Delaware Equipment Bonus: \_\_\_\_\_ SRECs  
(10% of total SREC output, if applicable)

Delaware Workforce Bonus: \_\_\_\_\_ SRECs  
(10% of total SREC output, if applicable)

Estimated SREC Quantity (first-year): \_\_\_\_\_ SRECs

E. Bid information:

- Date of receipt of Owner's application: \_\_\_\_\_  
[To be filled in by the SEU]
- Bid Price: \$ \_\_\_\_\_ / SREC (for first 7 Contract Years)

**PART II**  
**TERMS AND CONDITIONS**

Section 2.1 Purchase and Sale of SRECs.

2.1.1 Sale. The Owner agrees to sell and deliver to the SEU all SRECs created by the Project (the "**Project SRECs**"), up to the Maximum Annual Quantity. The sale and delivery of SRECs pursuant to this Agreement shall be deemed to occur in the State of Delaware. The Owner acknowledges and agrees that the SEU intends to resell the Project SRECs to retail electric suppliers in Delaware.

2.1.2 Excess SRECs.

- (a) If a Tier N-1 or N-2 Project or a Tier E-1 Project creates any Excess Amount during any Contract Year, the SEU shall, no later than 30 days after the end of such Contract Year, notify the Owner whether or not it will purchase all or any portion of such Excess Amount. Failure by the SEU to notify the Owner of such election within such time period shall be deemed an election by the SEU to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the SEU does not purchase any portion of the Excess Amount created by a Tier N-1 or N-2 Project or a Tier E-1 Project for any Contract Year and such SRECs were transferred to the GATS account of the SEU, the SEU shall promptly re-transfer such SRECs to the GATS account of the Owner or, if one is designated, the Owner Representative.
- (b) If a Tier N-3 Project or Tier E-2 Project creates any Excess Amount during any Contract Year: (a) the SEU shall have no right to purchase any

such Excess Amount; (b) the Owner shall be free to use or sell such SRECs as it deems appropriate; and (c) if any such SRECs were transferred to the GATS account of the SEU, the SEU shall promptly re-transfer such SRECs to the GATS account of the Owner or, if one is designated, the Owner Representative.

2.1.3 GATS Registration. The Owner or, if one is designated, the Owner Representative, shall be responsible for transferring the Project SRECs to the SEU by registering such SRECs in the GATS account of the SEU. If PJM will accept an irrevocable standing order from the Owner directing that all Project SRECs be transferred automatically to the GATS account of the SEU, the Owner shall execute such an order, in a form acceptable to the SEU. If PJM will not accept an irrevocable standing order from the Owner, but will accept a revocable standing order directing that all Project SRECs be transferred automatically to the GATS account of the SEU, the Owner shall execute such an order, in a form acceptable to the SEU.

2.1.4 Term of Purchase.

- (a) If the Operation Date of the Project did not occur prior to the Bid Date, the SEU's obligation to purchase SRECs shall commence as of the later of June 1, 2013, or the first day of the month after the Project is certified as an Eligible Energy Resource by the DPSC.
- (b) If the Operation Date of the Project occurred prior to the Bid Date, the SEU's obligation to purchase SRECs shall commence as of June 1, 2013.
- (c) The SEU's obligation to purchase SRECs shall continue for a period of 20 years after the Commencement Date.

2.1.5 Project SRECs. The Owner shall not be entitled to transfer or sell any SRECs other than Project SRECs pursuant to this Agreement. All Project SRECs shall be free and clear of any liens, taxes, claims, security interests or other encumbrances other than as provided for in Section 5.2.

Section 2.2 Operational Matters.

2.2.1 Interconnection.

- (a) The Owner shall be solely responsible for interconnecting the Project to the electric transmission or distribution system of the Interconnecting Utility. In order to invoke its rights under this Section 2.2.1 (b)-(d) the Owner shall submit a complete interconnection application (Step 1) to the Interconnecting Utility no later than 120 days after the Execution Date.
- (b) If the Interconnecting Utility notifies the Owner that there will be a fee or charge (other than a standard interconnection application fee) required to interconnect the Project, the Owner may, within 10 days of such notice,

elect to: (i) reduce the capacity of the Project to avoid or minimize such fee or charge; or (ii) terminate this Agreement.

- (c) If the Owner elects to reduce the capacity of the Project pursuant to Section 2.2.1(b), it shall provide the SEU with written notice specifying the reduced nameplate capacity of the Project and upon such election, the Estimated SREC Quantity (first year) shall be deemed to be reduced by the same percentage as the reduction in the nameplate capacity. Promptly upon receipt of such election, the SEU shall return or release any excess Bid Deposit to the Owner.
- (d) If the Owner elects to terminate this Agreement pursuant to Section 2.2.1(b), it shall provide the SEU with written notice of termination and promptly upon receipt of such election, the SEU shall return or release the entire Bid Deposit to the Owner.

2.2.2 Project Development. Unless the Project is operational as of the Execution Date, the Owner shall exercise all commercially reasonable efforts to complete construction of the Project, including obtaining all approvals of Governmental Authorities required in connection therewith.

2.2.3 Operation and Maintenance. The Owner shall operate and maintain the Project to ensure that it remains qualified as an Eligible Energy Resource at all times during the term of this Agreement.

2.2.4 Changes to Operational Characteristics. The Owner and, if one is designated, the Owner Representative, shall promptly notify the SEU of any substantive changes to the operational characteristics of the Project, including providing the SREC Procurements Administrator with copies of any notices submitted to the DPSC pursuant to 26 Del. Admin C. § 3008(3.1.8) and any correspondence relating to any such notices.

2.2.5 Metering. The Owner shall: (a) install, operate, maintain and calibrate (as necessary) the Required Meter for the Project; (b) provide the SEU with a detailed description of the Required Meter (including meter ID, pulse radio, channels, etc., if any); (c) provide not less than 10 days advance notice of any testing or calibration of the Required Meter; and (d) deliver to the SEU copies of all test results of Required Meters promptly upon the completion of any such test. The SEU shall have the right to test any Required Meter and, if such meter is determined to be operating outside industry standards, to require the Owner to re-calibrate such meter, at the Owner's cost.

2.2.6 Inspection. The Owner shall permit the SEU and its designees to inspect the Project at any time during normal business hours to verify the Owner's compliance with the terms of this Agreement; *provided, however*, that the Owner shall not be responsible for the cost of any such inspection.

Section 2.3 Conditions.

2.3.1 Certification as an Eligible Energy Resource. The SEU's obligation to purchase Project SRECs is subject to the Project being certified as an Eligible Energy Resource by the DPSC.

2.3.2 Approval to Operate. The SEU's obligation to purchase Project SRECs is subject to the Owner's receipt of an approval to operate the Project from the Interconnecting Utility.

2.3.3 GATS Registration. The SEU's obligation to purchase Project SRECs is subject to the Owner's establishment of a GATS account.

2.3.4 Certifications. the Owner shall deliver to the SEU, promptly upon receipt thereof: (a) a copy of the DPSC certification of the Project as an Eligible Energy Resource; (b) a copy of the approval to operate the Project issued by the Interconnecting Utility; and (c) the Owner's GATS account number and a copy of the Owner's GATS registration. If the Project is designated as being eligible for the Delaware Equipment Bonus and/or the Delaware Workforce Bonus in Part I, the Owner shall provide the SEU with a copy of the DPSC certification that the Project qualifies for such credit(s) no later than 30 days after the Operation Date.

Section 2.4 Purchase Price and Payment Terms.

2.4.1 Purchase Price.

- (a) The Purchase Price for Project SRECs created during Contract Years 1 through 7 will be the bid price set forth in the application submitted for such Project, as such bid price may be amended pursuant to the rules established by the SEU.
- (b) For all Projects, the Purchase Price for Project SRECs created during Contract Years 8 through 20 shall be \$50 per SREC.

2.4.2 SREC Bonus. If the Delaware Equipment Bonus or the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for either such bonus, payment of the Purchase Price will be based on the number of Project SRECs plus an additional 10%. If the Delaware Equipment Bonus and the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for both such bonuses, payment of the Purchase Price will be based on the number of Project SRECs plus an additional 20%.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: (a) for all Tier N-1, N-2 and E-1 Projects, the SEU shall pay the Payee for Project SRECs no later than

twenty-five (25) days after the end of the calendar quarter in which such SRECs were originally registered in the GATS account of the SEU; and (b) for all other Projects, the SEU shall pay the Payee for Project SRECs no later than thirty (30) days after the end of the calendar month in which such SRECs were originally registered in the GATS account of the SEU. The Program Administrator shall have the right to make payments hereunder by wire transfer. In the event the Program Administrator elects to make payment by wire transfer, Owner shall be responsible for providing the Program Administrator with account information and wiring instructions to facilitate such transfers.

#### 2.4.4 Limitations.

- (a) The SEU shall not be obligated to pay for any SRECs in excess of the sum of: (i) the Maximum Annual Quantity; plus (ii) if applicable, any portion of the Excess Amount which it has elected to purchase pursuant to Section 2.1.2(a).
- (b) The SEU may withhold payment of any amounts disputed in good faith.

2.4.5 Payment Errors. In the event that any Party becomes aware of any payment error (whether such error was in the form of an underpayment or overpayment), such Party shall notify the other Parties in writing of such error and the Party required to make payment shall do so within thirty (30) days of such notification; *provided, however*, that no payment adjustment shall be required unless the foregoing notice is delivered within eleven (11) months of the date of the original payment.

### Section 2.5 Completion Guarantee.

2.5.1 Guaranteed On-Line Date. The Owner shall cause the Operation Date to occur no later than the date which is 365 days after the Execution Date (such date, the "*Guaranteed On-Line Date*"), *provided, however*, that the Guaranteed On-Line Date shall be extended for up to 365 days due to: (a) a Force Majeure event; or (b) the failure by the Interconnecting Utility to complete the interconnection after the Owner submits a timely and complete interconnection application in accordance with Section 2.2.1.

#### 2.5.2 Damages for Delayed Operation Date.

- (a) If the Operation Date does not occur by the Guaranteed On-Line Date, the Owner shall pay to the SEU, and if such amount is not paid, the SEU shall be entitled to draw against the Bid Deposit, an amount equal to 1/30 of the original Bid Deposit amount for each day (or portion thereof) of such delay, for up to 30 days of delay.
- (b) If the Operation Date does not occur by the date which is 31 days after the Guaranteed On-Line Date, the SEU shall have the right to terminate this Agreement.

- (c) The remedies set forth in Sections 2.5.2(a) and 2.5.2(b) shall be the Owner's exclusive liability based on a delay in achieving or a failure to achieve the Operation Date by the Guaranteed On-Line Date.
- (d) The Owner acknowledges and agrees that: (i) the SRECs being purchased by the SEU are for the benefit of certain retail electric suppliers operating in the State of Delaware; (ii) in the event the Operation Date does not occur by the Guaranteed On-Line Date, the damages to be suffered by the SEU and such electric suppliers would be difficult or impossible to determine with certainty; (iii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the damages set forth in Section 2.5.2(a) represent reasonable and genuine estimates of such damages; and (iv) such damages are not intended to and do not constitute a penalty.

Section 2.6 Representations, Warranties and Acknowledgements.

2.6.1 Representations and Warranties of Owner. The Owner hereby represents and warrants to the SEU as follows:

- (a) unless it is an individual, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;
- (c) there are no legal, administrative or arbitral proceedings or actions, controversies or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;
- (d) none of the execution, delivery or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;
- (e) the execution, delivery and performance of this Agreement have been duly authorized by all requisite action;
- (f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the SEU, will constitute its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to

the enforcement of creditors' rights generally and by general equitable principles;

- (g) it has rights in, and good title to the Collateral, and has full power and authority to grant to the SEU the security interest in the Collateral and to execute, deliver and perform its obligations in accordance with the terms of this Agreement without the consent or approval of any other Person other than any consent or approval that has been obtained;
- (h) the security interest granted by the Owner to the SEU pursuant to Section 5.2.1 constitutes a valid, legal and, upon the filing of the financing statements referred to in Section 5.2.2, a first-priority perfected security interest in all the Collateral granted by the Owner as security for the Secured Obligations;
- (i) the Project is an Eligible Energy Resource as defined by REPSA and will obtain all necessary approvals, regulatory or otherwise, to perform the obligations set forth herein;
- (j) the information set forth in Part I is true and accurate in all respects;
- (k) the Owner has received no supplemental funding from public sources other than the funding, if any, identified in Part I;
- (l) to the extent bidding in Tiers N-1, N-2 or N-3 all major components of the Project are or will be new and unused and are being or will be used for the first time in the Project; and
- (m) if a New System, its completed System Interconnection Application's acceptance date with the Interconnecting Utility will be after the first date of the preceding compliance year's auction process.

2.6.2 Acknowledgements by Owner. The Owner hereby acknowledges and agrees that:

- (a) the SEU has executed this Agreement and is purchasing Project SRECs for the benefit of certain retail electricity suppliers operating in the State of Delaware;
- (b) in executing and performing this Agreement, the SEU is acting on behalf of such suppliers;
- (c) such suppliers are third party beneficiaries of this Agreement who are entitled to directly enforce the terms hereof; and
- (d) the SEU may appoint a third-party (the "*Contracting Agent*") to perform any or all of the obligations and responsibilities of the SEU pursuant to

this Agreement and, in such event, the Owner shall recognize the authority of the Contracting Agent to perform such obligations and responsibilities.

2.6.3 Acknowledgement by SEU. The SEU acknowledges and agrees that it is not entitled to any portion of the energy output, capacity or ancillary services from the Project pursuant to this Agreement.

Section 2.7 Change in Estimated SREC Quantity. An Owner may not modify the Estimated SREC Quantity except as expressly permitted hereunder.

Section 2.8 Default And Remedies.

2.8.1 Events of Default. Each of the following shall constitute an “*Event of Default*” with respect to a Party:

- (a) such Party fails to pay when due any amount owed pursuant to this Agreement (other than an amount disputed in good faith) for a period of 5 days following receipt of notice of such failure;
- (b) any representation or warranty of such Party made pursuant to this Agreement shall have been incorrect when made and shall remain incorrect 30 days after notice thereof;
- (c) with respect to the Owner and, if one is designated, the Owner Representative: (i) the Bid Deposit or, if applicable, the Supplemental Credit Support is not maintained or the issuer thereof repudiates its obligations thereunder; or (ii) the lien required pursuant to Section 5.2 ceases to be a perfected, first priority security interest;
- (d) with respect to the Owner and, if one is designated, the Owner Representative, the nameplate rating of the Project varies from that set forth in Part I by more than: (i) 5% for a Tier N-1 Project, a Tier N-2 Project, a Tier E-1 Project, a Tier N-3 Project with a nameplate rating less than 500 kW or a Tier E-2 Project with a nameplate rating less than 500 kW; or (ii) 2.5% for a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater;
- (e) with respect to the Owner and, if one is designated, the Owner Representative, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the SEU elects to purchase pursuant to Section 2.1.2(a)) are not transferred to the SEU;
- (f) with respect to the Owner and, if one is designated, the Owner Representative, the Project shall have been designated in Part I as eligible for the Delaware Equipment Bonus or the Delaware Workforce Bonus and

the DPSC shall have failed to certify the Project as eligible for any such designated credit within 30 days after the Operation Date;

- (g) with respect to the Owner Representative (but not the Owner), either: (i) any representation or warranty of the Owner Representative made pursuant to Part III shall have been incorrect when made and shall remain incorrect 30 days after notice thereof; or (ii) the Owner Representative fails to perform any obligation pursuant to Part III for a period of 30 days following receipt of notice of such failure;
- (h) such Party fails to perform any other obligation pursuant to this Agreement for a period of 30 days following receipt of notice of such failure; or
- (i) a proceeding is instituted against such Party seeking to adjudicate it as bankrupt or insolvent and such proceeding is not dismissed within 60 days of filing; such Party makes a general assignment for the benefit of its creditors; a receiver is appointed on account of the insolvency of such Party; such Party files a petition seeking to take advantage of any Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts; or such Party is unable to pay its debts when due or as they mature.

#### 2.8.2 General Remedies.

- (a) Upon the occurrence of an Event of Default by the Owner, the SEU shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any remedies available at law or in equity, including specific performance, termination of this Agreement, and/or recovery of damages equal to the incremental cost of replacing the expected SREC output of the Project for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the SEU); and/or (iii) suspend its performance hereunder.
- (b) Upon the occurrence of an Event of Default by the Owner Representative pursuant to Section 2.8.1(g), the Owner and/or the SEU shall be entitled to: (i) remove such Owner Representative as a Party to this Agreement by delivery of written notice to such Owner Representative and the other Party and, if necessary, replace such Owner Representative; and (iii) exercise any remedies available at law or in equity, including specific performance; *provided, however*, that neither the Owner nor the SEU may terminate this Agreement based on such an Event of Default by the Owner Representative.

- (c) Upon the occurrence of an Event of Default by the SEU, the Owner shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any remedies available at law or in equity, including specific performance or termination of this Agreement and recovery of damages equal to the difference, if positive, between the Purchase Price under this Agreement and the market price for SRECs in Delaware for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the Owner); and/or (iii) suspend its performance hereunder. During any such suspension, the Owner and, if one is designated, the Owner Representative, shall have the right to transfer and sell Project SRECs to one or more third parties in order to mitigate its damages hereunder.

#### 2.8.3 Specific Remedies.

- (a) Upon the occurrence of an Event of Default described in Section 2.8.1(f), the SEU may terminate this Agreement and recover damages equal to the remaining balance of the Bid Deposit. Payment or forfeiture of such amount shall be the exclusive liability of the Owner in such event.
- (b) The Owner and, if one is designated, the Owner Representative, acknowledges and agrees that: (i) in the event not all Project SRECs are transferred to the SEU or the Project fails to qualify for the Delaware Workforce Bonus after the SEU allots a portion of its procurement for SREC credits, the damages to be suffered by the SEU and certain retail electricity suppliers would be difficult or impossible to determine with certainty; (ii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the damages set forth in Section 2.8.3(a) represent reasonable and genuine estimates of such damages; and (iii) such damages are not intended to and do not constitute a penalty.

#### 2.8.4 Limitations of Liability.

- (a) Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract, or otherwise.
- (b) Except to the extent provided otherwise in this Agreement, the Owner Representative shall not be liable for a breach or default by the Owner.

#### Section 2.9 Force Majeure.

2.9.1 Excused Performance. Notwithstanding any other provision of this Agreement, a Party shall be excused from performance hereunder (other than payment of amount due) to the extent it is unable to perform due to a Force Majeure event.

2.9.2 Conditions. A Party claiming Force Majeure shall: (a) have the burden of proving the existence and consequences of a Force Majeure event; and (b) exercise all commercially reasonable efforts to resume performance as soon as reasonably practicable. The suspension of performance due to a Force Majeure shall be of no greater scope and of no longer duration than is required by such Force Majeure.

2.9.3 Notification. A Party affected by a Force Majeure event shall: (a) provide prompt written notice of such Force Majeure event to the other Party (in no event later than 5 days after the occurrence of such Force Majeure event), which notice shall include a description of the Force Majeure event and its effect on performance under this Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure; (b) keep the other Party reasonably apprised of efforts to address, and mitigate the impact of, the Force Majeure event; and (c) provide prompt notice to the other Party as soon as it is able to resume performance.

2.9.4 No Term Extension. In no event will any delay or failure of performance caused by a Force Majeure extend the term of this Agreement.

2.9.5 Extended Force Majeure. In the event that the Owner suffers a Force Majeure event that prevents it from performing hereunder for a period of 1 year or more, the SEU may, by written notice, terminate this Agreement without liability to the Owner.

### **PART III OWNER REPRESENTATIVE**

The provisions of this Part III shall apply only if an Owner Representative is designated in Paragraph B of Part I.

Section 3.1 Agency Appointment. Subject to the Owner's rights to terminate or replace the Owner Representative pursuant to Section 3.3, the Owner hereby appoints the Owner Representative as the Owner's exclusive agent to manage, control, transfer, deposit and register the Project SRECs pursuant to the terms of this Agreement.

Section 3.2 Agency Responsibility. The Owner Representative shall be responsible for managing, controlling, transferring, depositing and registering the Project SRECs on behalf of the Owner within GATS pursuant to the terms of this Agreement. If the Owner has designated the Owner Representative as the Payee, the Owner Representative shall accept all payments hereunder as agent for, and on behalf of, the Owner.

Section 3.3 Termination or Replacement of Owner Representative.

3.3.1 Right to Terminate or Replace. the Owner may, at its discretion, terminate and/or replace the Owner Representative at any time and for any reason (or no reason), *provided, however,* that: (a) the Owner shall immediately notify the SEU of such termination or replacement; and (b) any replacement Owner Representative shall execute a counterpart of this Agreement and agree to be bound by the terms hereof.

3.3.2 Effect of Termination or Replacement. Immediately upon receipt by the SEU of written notice in accordance herewith from the Owner that an Owner Representative is being terminated or replaced, such Owner Representative shall be deemed to no longer be a Party to this Agreement. Termination or replacement of the Owner Representative shall not affect any other contractual arrangements between the Owner and the Owner Representative.

3.3.3 Replacement Owner Representative.

- (a) Immediately upon receipt by the SEU of: (i) written notice in accordance herewith from the Owner that it has designated a replacement Owner Representative; and (ii) an executed counterpart of this Agreement, signed by such replacement Owner Representative, such replacement Owner Representative shall be deemed to be a Party to this Agreement.

Section 3.4 Representations and Warranties of Owner Representative. The Owner Representative hereby represents and warrants to the SEU as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;
- (c) there are no legal, administrative or arbitral proceedings or actions, controversies or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;
- (d) none of the execution, delivery or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;
- (e) the execution, delivery and performance of this Agreement have been duly authorized by all requisite action;

- (f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the Owner and the SEU, will constitute its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;
- (g) the description of the Project set forth in Part I is true and accurate in all respects; and
- (h) it owns, leases, controls or is the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

Section 3.5 Continuing Eligibility. The Owner Representative shall, at all times during the term of this Agreement, own, lease, control or be the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

#### PART IV MINIMUM ANNUAL QUANTITY

The provisions of this Part IV shall apply only if the Project is designated as a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater in Paragraph D of Part I.

#### Section 4.1 Guaranteed Quantity.

4.1.1 Minimum Annual Quantity. During each Contact Year, the Owner shall transfer Project SRECs in an amount equal to no less than 80% of the Annual Contract Quantity (such amount, the "*Minimum Annual Quantity*").

#### 4.1.2 Exclusive Remedy.

- (a) If, during any Contact Year, the Owner fails to transfer the Minimum Annual Quantity of Project SRECs to the SEU, the Owner shall pay the SEU damages equal to the product of: (i) the difference between the Minimum Annual Quantity and the quantity of Project SRECs delivered during such Contact Year; and (ii) the difference, if positive, between (A) the lesser of the prevailing market price of SRECs as reasonably determined by the SEU, and the applicable Alternative Compliance Payment and (B) the applicable price for Project SRECs under this Agreement. Payment of such amount shall be the exclusive liability of the Owner for any such failure with respect to any Contract Year.
- (b) The Owner and, if one is designated, the Owner Representative acknowledge and agree that: (i) the Project SRECs are for the benefit of

certain retail electric suppliers operating in the State of Delaware; (ii) if the Project produces less than the Minimum Annual Quantity during any Contract Year, the damages to be suffered by the SEU and such electric suppliers would be difficult or impossible to determine with certainty; (iii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the damages set forth in Section 4.1.2(a) represent reasonable and genuine estimates of such damages; and (iv) such damages are not intended to and do not constitute a penalty.

Section 4.2 Supplemental Credit Support.

4.2.1 Obligation to Maintain. The Owner shall at all times maintain credit support (the "*Supplemental Credit Support*") in the following amounts:

- (a) during the first 7 Contract Years, 5% of the value of the Annual Contract Quantity for the first Contract Year; and
- (b) during the second 13 Contract Years, 10% of the value of the Annual Contract Quantity for the eleventh Contract Year.

4.2.2 Form of Supplemental Credit Support. The Supplemental Credit Support shall be in the form of cash, a letter of credit or other collateral acceptable to the SEU.

4.2.3 Obligation to Replenish. If the SEU draws on the Supplemental Credit Support, the Owner must replenish such Supplemental Credit Support to the required level within 3 Business Days.

**PART V  
CREDIT SUPPORT**

Section 5.1 Bid Deposit.

5.1.1 Posting of Deposit. Unless the Project is designated as an "Operating Project" in Paragraph D of Part I (in which case no Bid Deposit was provided), the Owner shall cause the Bid Deposit to remain in effect for the benefit of the SEU. No interest shall be owed with respect to a Bid Deposit in the form of cash.

5.1.2 Return or Release of Deposit. Unless the Bid Deposit has been returned or released pursuant to Section 2.2.1(d), the SEU shall return or release any remaining balance of the Bid Deposit promptly after: (a) it receives written verification that the DPSC has certified the Project as an Eligible Energy Resource; (b) if the Project is a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater, the Owner provides the Supplemental Credit Support; and (c) the Owner has executed any documentation reasonably necessary to perfect the security interest described in Section 5.2.

5.1.3 Application of Deposit. The SEU shall be entitled to call on and/or apply the Bid Deposit as provided pursuant to this Agreement.

Section 5.2 Security Interest.

5.2.1 Grant.

- (a) As security for the performance by the Owner of its obligations under this Agreement (the "***Secured Obligations***"), the Owner hereby grants to the SEU a first-priority security interest, lien and pledge in and to all of the Owner's right, title and interest in and to all Project SRECs, whether now existing or hereafter arising, the GATS account of the Owner, and all proceeds of any of the foregoing (collectively, the "***Collateral***").
- (b) The SEU's security interest in and to the Collateral and the SEU's rights and the Owner's obligations hereunder, shall be absolute and unconditional irrespective of: (i) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the terms governing the Secured Obligations; (ii) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to or departure from any guaranty, for any and all of the Secured Obligations; or (iii) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Owner in respect of the Secured Obligations or this Agreement.

5.2.2 Filing and Perfection.

- (a) The SEU is hereby authorized to file one or more financing statements, continuation statements and/or any other documents required for the purpose of perfecting, confirming, continuing, enforcing or protecting the SEU's security interest in the Collateral, with or without the signature of the Owner, naming the Owner as "debtor" and the SEU as "secured party."
- (b) The Owner, at its sole cost and expense, shall execute, acknowledge, deliver and cause to be duly filed any and all consents, instruments, certificates and documents and take any and all actions as the SEU may, at any time and from time to time, reasonably request in order to perfect, preserve and protect the SEU's security interest in and to the Collateral and the rights and remedies created hereby.

5.2.3 Remedy. Upon the occurrence of an Event of Default by the Owner, the SEU may take any lawful action that it deems necessary or appropriate to protect or realize upon its security interest in the Collateral or any part thereof, or exercise any other or additional rights or remedies exercisable by a secured party under the UCC or under any

other Applicable Law, including selling the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the SEU may deem commercially reasonable in accordance with the UCC and as permitted by Applicable Law.

## PART VI DEFINITIONS; RULES OF CONSTRUCTION

Section 6.1 Definitions. The following capitalized terms have the following meanings when used in this Agreement:

**"Affiliate"** means, with respect to any Person, another Person that controls, is under the control of, or is under common control with, such Person. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

**"Agreement"** means this Solar Renewable Energy Credit Transfer Agreement between the Owner, the SEU and, if one is designated, the Owner Representative.

**"Alternative Compliance Payment"** has the meaning set forth in the REPSA.

**"Annual Contract Quantity"** means: (a) for the first Contract Year, the Estimated SREC Quantity; and (b) for each subsequent Contract Year, 99.5% of the Annual Contract Quantity in effect for the immediately preceding Contract Year.

**"Applicable Law"** means any law, statute, treaty, code, ordinance, regulation, certificate, order, license, permit or other binding requirement of any Governmental Authority now in effect or hereafter enacted, amendment to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction and any judicial, administrative, arbitral or regulatory decree, judgment, injunction, writ, order, award or like action applicable to any Party.

**"Bid Date"** shall mean the date specified as such in Paragraph E of Part I.

**"Bid Deposit"** means a deposit in the amount of \$100 per kW of the nameplate rating (DC at STC as designated by the solar module manufacturer) of the Project, in the form of a bid bond, letter of credit or cash.

**"Business Day"** means any calendar day that is not a Saturday, a Sunday or a state or federal holiday on which banks in Delaware are permitted or authorized to close.

**"Code"** means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

**"Collateral"** has the meaning set forth in Section 5.2.1(a).

**“Commencement Date”** means the date as of which the SEU is obligated to purchase SRECs hereunder, as specified in Section 2.1.4(a) or 2.1.4(b).

**“Contract Year”** means each 12-month period commencing on the Commencement Date and each anniversary thereof.

**“Contracting Agent”** has the meaning set forth in Section 2.6.2.

**“DC”** means direct current electric energy.

**“Delaware Equipment Bonus”** has the meaning set forth in Paragraph D of Part I.

**“Delaware Workforce Bonus”** has the meaning set forth in Paragraph D of Part I.

**“DPSC”** means the Delaware Public Service Commission or any successor agency.

**“Eligible Energy Resource”** has the same meaning set forth in REPSA.

**“Environmental Attribute”** means any attribute of an environmental or similar nature (including all Generation Attributes) that is created or otherwise arises from the Project’s generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, excluding: (a) any such attribute not legally capable of being transferred to the SEU; and (b) Tax Credits. Forms of Environmental Attributes include any and all environmental air quality credits, green credits, carbon credits, carbon tax credits, emissions reduction credits, greenhouse gas credits, certificates, tags, offsets, allowances, or similar products, rights, claims or benefits, howsoever entitled. Environmental Attributes include those currently existing (such as SRECs) or arising during the term of this Agreement under local, state, regional, federal or international legislation or regulation relevant to the avoidance of any emission or to the promotion of renewable energy under any governmental, regulatory or voluntary programs, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws, or regulations involving or administered by the Clean Air Markets Division or other division or branch of the U.S. Environmental Protection Agency or any successor administrator or other federal agency or department, or any local, state, regional, or federal entity given jurisdiction over a program, or any voluntary program, involving transferability of, or credit or reporting rights or other rights or benefits for, attributes of an environmental or similar nature.

**“Estimated SREC Quantity”** means the quantity of SRECs designated in Paragraph D of Part I, as such quantity may be reduced pursuant to the terms of this Agreement.

**“Event of Default”** has the meaning set forth in Section 2.8.1.

**“Excess Amount”** means, with respect to the SRECs created by the Project during any Contract Year, any such SRECs in excess of the Maximum Annual Quantity.

**“Execution Date”** means the date this Agreement is signed by the SEU, as designated on the signature page of the counterpart executed by the SEU.

**“Existing System”** means a system with final interconnection approval before the first date of the preceding auction process (i.e. April 2, 2012 for compliance year 2012).

**“Force Majeure”** means an event or circumstance that prevents a Party from performing its obligations in accordance with the terms of this Agreement, which event or circumstance is not within the reasonable control, or the result of negligence, of such Party, including acts of God; unusually severe actions of the elements such as floods, inundation, landslides, earthquake, lightning, hurricanes, or tornadoes; unusually severe weather; terrorism; war (whether or not declared); sabotage, acts or threats of terrorism, riots or public disorders; national or regional strikes or labor disputes; delay in delivery of equipment comprising the Project so long as such equipment was ordered within 90 days of the Execution Date; and actions or failures to act of any Governmental Authority (including the failure to issue permits); *provided, however*, that Force Majeure shall not include: (a) any strike or labor dispute by any employees or the Owner or any other employees of contractors employed at the Project and aimed at the Owner or such contractor(s); (ii) changes in, or that otherwise affect, the price of SRECs; or (iii) equipment failure, unless caused by a circumstance that would otherwise constitute a Force Majeure.

**“GATS”** means the generation attribute tracking system used by PJM Interconnection, LLC to facilitate the transfer of SRECs.

**“Generation Attribute”** means any characteristic of the solar energy output of the Project other than energy, capacity or Tax Credits, including the Project’s generation source, geographic location, emission credits, carbon credits, vintage and eligibility for a renewable energy portfolio standard or comparable standard or program, including “generation attributes” as defined in REPSA.

**“Governmental Authority”** means any federal, state, local or municipal government, or quasi-governmental, regulatory or administrative agency, commission, court, tribunal or other body or authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, taxing or other binding jurisdiction, authority or power, including PJM, GATS and NERC.

**“Guaranteed On-Line Date”** has the meaning set forth in Section 2.5.1.

**“Interconnecting Utility”** means the Person that owns the electric transmission or distribution system with which the Project is directly interconnected.

**“kW”** means 1 kilowatt of electric power.

**“Maximum Annual Quantity”** means, for each Contract Year, 110% of the Annual Contract Quantity.

**“Minimum Annual Quantity”** has the meaning set forth in Section 4.1.1.

**“MWh”** means 1 megawatt hour of electric energy.

“**New System**” means a system with final interconnection approval after the first date of the preceding auction process (i.e. April 2, 2012 for compliance year 2012).

“**Operation Date**” means the date on which the Project commences generating electricity.

“**Owner**” means the Person identified as such in Paragraph A of Part I.

“**Owner Representative**” means the Person, if any identified as such in Paragraph B of Part I.

“**Party**” means each of the Owner, the SEU and, if one is designated, the Owner Representative.

“**Payee**” means the Owner or the Owner Representative, as designated in Paragraph C of Part I.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**PJM**” means PJM Interconnection, LLC or any successor organization thereto.

“**Project**” has the meaning set forth in the introductory paragraph of this Agreement, as such Project is described further in Paragraph D of Part I.

“**Project SRECs**” has the meaning set forth in Section 2.1.1.

“**Purchase Price**” means, with respect to any Contract Year, the amount per Project SREC to be paid by the SEU in accordance with Section 2.4.1.

“**REPSA**” means the Delaware Renewable Energy Portfolio Standards Act (26 Del. C. §§ 351 *et seq.*), as amended, and the implementing rules and regulations thereunder.

“**Required Meter**” means: (a) for any Tier 1 Project that receives the base price or alternate price set forth in the table included in Section 2.4.1(a), at Owner’s option, a standard, utility-grade meter or a revenue-grade meter, in either case capable of on-line monitoring; and (b) for any other Project, a revenue-grade meter capable of on-line monitoring.

“**Secured Obligations**” has the meaning set forth in Section 5.2.1(a).

“**SEU**” has the meaning set forth in the introductory paragraph of this Agreement.

“**SREC**” means a tradable instrument which represents or is associated with 1 MWh of electric energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology and which qualifies as a “Renewable Energy Credit” under REPSA, together with any Environmental Attributes associated with such energy or the generation thereof.

“*STC*” means standards test conditions, which are: (a) internal cell temperature of 25° C; and (b) irradiance of 1,000 watts per square meter with an air mass 1.5 spectrum.

“*Supplemental Credit Support*” has the meaning set forth in Section 4.2.1.

“*Tax Credits*” means: (a) investment tax credits under Section 48 of the Code; (b) cash grants in lieu of investment tax credits as described in Section 1603 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5); and (c) any federal, state, or local tax credits, cash grants in lieu of tax credits, tax exemptions, depreciation, tax attributes or benefits, or similar programs determined by reference to the construction, operation or ownership of, investment in, or production of electricity from, renewable energy production facilities, in each case whether in existence as of the Bid Date or arising thereafter; *provided, however*, that Tax Credits shall not include any carbon tax credits.

“*Tier N-1 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier N-2 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier N-3 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier E-1 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier E-2 Project*” has the meaning set forth in Paragraph D of Part I.

“*UCC*” means the Uniform Commercial Code as in effect in the State of Delaware.

Section 6.2 Rules of Construction. The following rules of construction shall apply when interpreting the terms of this Agreement:

- (a) references to “Parts,” “Sections,” or “Exhibits” shall be to Parts, Sections or Exhibits of this Agreement unless expressly provided otherwise;
- (b) each Exhibit to this Agreement shall be deemed to be incorporated herein by reference as if such Exhibit were set forth in its entirety herein;
- (c) the terms “herein,” “hereby,” “hereunder,” “hereof” and terms of similar import in this Agreement refer to the Agreement as a whole and not to any particular subdivision unless expressly so limited and the term “this Section” refers only to the Section hereof in which such words occur;
- (d) use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation”;
- (e) any reference to any Applicable Law shall be deemed to refer to that law as it may be amended from time to time;

- (f) the headings appearing in this Agreement are for convenience only, do not constitute any part of this Agreement and shall be disregarded in construing the language contained herein; and
- (g) no term of this Agreement shall be construed in favor of, or against, a Party as a consequence of one Party having had a greater role in the preparation or drafting of this Agreement, but shall be construed as if the language were mutually drafted by both Parties with full assistance of counsel.

## PART VII GENERAL PROVISIONS

Section 7.1 Notices. Any notices, requests, consents or other communications required or authorized to be given by one Party to another Party pursuant to this Agreement shall be in writing. Such communications directed to the Owner or, if one is designated, the Owner Representative, shall be addressed as set forth in Part I. Communications directed to the SEU shall be addressed as set forth below. Any Party may update its address for notice by providing written notice in accordance herewith. Written notices, requests, consents and other communications shall be deemed to have been received on the Business Day following the day on which it was delivered. Notwithstanding the foregoing, in the event the SEU establishes an on-line web site for certain routine communications pursuant to this Agreement, notice of such routine matters shall be permitted in accordance with procedures established by the SEU.

SEU:

**[Contract Administrator]**

Section 7.2 Governing Law. This Agreement and the rights and obligations of the Parties shall be governed by and construed, enforced and performed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of law.

Section 7.3 Dispute Resolution. All disputes arising between or among the Parties pursuant to this Agreement shall be submitted to neutral, non-binding mediation. If the Parties to such dispute are unable to agree upon a mutually acceptable mediator, each such Party shall designate a mediator and those mediators shall agree on a single, neutral mediator to conduct the mediation. All costs of the neutral mediator shall be shared equally by the Parties. If the Parties are unable to resolve a dispute within 30 days of the dispute being submitted to mediation, any Party to the dispute shall be entitled to initiate litigation in a court of competent jurisdiction.

Section 7.4 Jurisdiction and Venue. THE PARTIES AGREE THAT JURISDICTION AND VENUE IN ANY ACTION BROUGHT BY ANY PARTY PURSUANT TO THIS AGREEMENT SHALL PROPERLY (AND EXCLUSIVELY) LIE IN ANY FEDERAL OR STATE COURT LOCATED IN NEW CASTLE COUNTY, DELAWARE. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT FOR ITSELF AND IN RESPECT OF ITS

PROPERTY WITH RESPECT TO SUCH ACTION. EACH PARTY IRREVOCABLY AGREES THAT VENUE WOULD BE PROPER IN ANY SUCH COURT, AND HEREBY WAIVES ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

Section 7.5 Service of Process. Each Party: (a) irrevocably waives personal service of process in any litigation relating to this Agreement; and (b) irrevocably consents to service of process in any action or proceeding arising out of, or relating to, this Agreement by the mailing of copies thereof by registered mail, postage prepaid, such service to become effective 10 days after such mailing; *provided, however*, that nothing in this Section 7.5 shall affect the right of a Party to serve process in any other manner permitted by Applicable Law.

Section 7.6 Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND AS SEPARATELY BARGAINED-FOR CONSIDERATION, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY CLAIM ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

Section 7.7 Records. Each Party shall keep and maintain complete and accurate records and all other data reasonably necessary for the proper administration of this Agreement. Any Party shall provide such records and data to another Party within 15 days of a written request for such information. All such records and data shall be retained by each Party for at least 3 years following the year in which such records were created.

Section 7.8 Assignment.

7.8.1 Restrictions. Except as permitted pursuant to Section 7.8.2, neither the Owner nor the Owner Representative may assign this Agreement or any portion thereof or delegate any of its duties hereunder except where otherwise provided in this Agreement, without the prior written consent of the SEU. Without limiting the foregoing, the Owner may not sell, assign, convey, dispose of or otherwise transfer the Project without assigning this Agreement to the purchaser, assignee or transferee.

7.8.2 Permitted Assignments. The Owner may assign this Agreement without the consent of the SEU: (a) in connection with any financing of the Project, which financing shall be at the Owner's sole expense; or (b) to a purchaser or transferee of the Project provided all the requirements of the Section 7.8.2 are met. With respect to any permitted assignment of this Agreement: (i) the assigning Party shall provide at least thirty (30) days prior notice of any such assignment, which notice shall include the name of, and contact information for, the assignee; (ii) the assignee shall expressly assume the assignor's obligations hereunder pursuant to an agreement in form and substance reasonably acceptable to the non-assigning Party; and (iii) no such assignment shall relieve the assignor of its obligations hereunder.

7.8.3 Consent to Assignment. Upon or prior to a permitted assignment in connection with a financing of the Project, the SEU agrees to execute a written consent in a form reasonably acceptable to the SEU. If such written consent is not requested, the Owner

shall notify the SEU of any such assignment to its secured lender(s) no later than thirty (30) days after such assignment.

7.8.4 Binding Effect. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

Section 7.9 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

Section 7.10 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture, or partnership between or among any of the Parties or to impose any partnership obligation or liability upon any Party.

Section 7.11 Survival of Obligations. Applicable provisions of this Agreement shall continue in effect after expiration or termination of this Agreement, including early termination, to the extent necessary to enforce or complete the duties, obligations and responsibilities of the Parties arising prior to such expiration or termination, including to provide for final billings and adjustments related to the period prior to termination and payment of any money owed pursuant to this Agreement.

Section 7.12 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

Section 7.13 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties and supersedes all previous and collateral agreements or understandings with respect to the subject matter hereof.

Section 7.14 Amendments. Amendments to the terms of this Agreement (including any Exhibit hereto) shall only be effective if made in writing and signed by the Parties.

Section 7.15 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 7.16 Counterparts. This Agreement and any amendment hereto may be executed in two or more counterparts, all of which taken together shall constitute a single agreement.

Section 7.17 Further Assurances. Each of the parties hereto agree to cooperate with the other and 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, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above referenced.

Owner:

**[Name of Owner]**

By: \_\_\_\_\_

Owner Representative:

**[Name of Owner Representative]**

By: \_\_\_\_\_

**SEU One, LLC**

By: \_\_\_\_\_

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