

SOLAR GENERATION PURCHASE AGREEMENT

This power purchase agreement (this "Agreement") is entered into this ___ day of August, 2016 (the "Effective Date") by and between Iowa Falls Community School District, an Iowa public school corporation ("Buyer") and Viking Solar, LLC, an Iowa limited liability company (hereinafter "Seller").

RECITALS

1. Seller will design, install, operate and maintain a solar photovoltaic electric generating facility on one or more sites owned by Buyer with an aggregate nameplate Capacity of approximately 921 kW (DC). The Facility will interconnect with the Buyer System and deliver its Capacity and Net Energy to Buyer at the Points of Delivery.
2. Buyer operates schools and related facilities on the Site which utilize a substantial amount of Energy ("Buyer Improvements"). Buyer is willing to purchase, and Seller is willing to sell to Buyer, the Net Energy and associated Capacity of the Facility, subject to the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Seller and Buyer agree as follows:

AGREEMENT

ARTICLE I - DEFINITIONS

- 1.1 **Agreement:** This contract, including all appendices, for the purchase of Capacity and Net Energy entered into between Seller and Buyer, as amended by the Parties from time to time in accordance with this Agreement.
- 1.2 **Applicable Law:** All applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).
- 1.3 **Buyer:** Iowa Falls Community School District, an Iowa public school corporation, and its successors and assigns.
- 1.4 **Buyer Easement:** The Easement Agreement dated August 3, 2016 between Seller and Buyer pursuant to which Seller acquires the right to use the Site from Buyer for installation and operation of the Facility.

- 1.5 Buyer Property:** The real property and improvements owned or controlled by Buyer, including the Site, as described in Exhibit C.
- 1.6 Buyer System:** The electrical distribution and delivery equipment and related facilities owned and operated by Buyer at the Buyer Property and which serve Buyer's electrical load at the Buyer Improvements.
- 1.7 Capacity:** The output potential a machine or system can produce or carry under specified conditions. The Capacity of generating equipment is generally expressed in kW or MW. Capacity is also referred to as "capability" in the industry and for the purposes of this Agreement the terms are synonymous.
- 1.8 Commercial Operation:** When (a) one hundred percent (100%) of the Committed Nameplate Capacity of the Facility is installed and operational, (b) any necessary Interconnection Facilities are installed and operational; and (c) Seller has obtained all Permits necessary to authorize the production and delivery of the Net Energy and Capacity to Buyer.
- 1.9 Commercial Operation Date:** The first calendar day following a successful demonstration that all portions of the Facility have reached Commercial Operation, which shall not be later than February 28, 2017.
- 1.10 Committed Nameplate Capacity:** The total maximum designed power output of all generating equipment installed at the Facility as specified by the equipment manufacturer which shall be no less than 800 kW (DC).
- 1.11 Emergency:** Any condition or situation that in the sole judgment of Utility, Buyer, or any other entity with operational control or authority over the interconnected distribution or transmission system (i) endangers or might endanger life or property or (ii) adversely affects or might adversely affect the Buyer System or Buyer Property or Utility's ability, or the ability of any other entity associated with the interconnected transmission system, to maintain safe and reliable electric service.
- 1.12 Energy:** The amount of electricity either used or generated over a period of time expressed in terms of kWh or MWh.
- 1.13 Environmental Law:** Any federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations, and other governmental restrictions and requirements, relating to the production, handling, release, discharge, treatment or disposal of air pollutants, process waste water, Hazardous Substances, (including the laws described in the definitions of "Hazardous Substances"), toxic substances or otherwise relating to the natural environmental or natural resources (including soil, land surface waters, ground water, ambient air, and plant and animal life), each as amended from time to time, including, but not limited to, (i) the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.*; (ii) the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq.*; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§6901 *et seq.*; (iv) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 15 U.S.C. §§2601 *et seq.*; (vi)

Occupational Safety and Health Act of 1970; (vii) the Emergency Planning and Community Right-to-Know Act 42 U.S.C. §§11001 et seq.; (viii) the Superfund Amendment and Reauthorization Act; and (viii) any other similar applicable federal, state or local law.

- 1.14 Environmental Liability:** Any costs, damages, liabilities, expenses, obligations or other responsibility under Environmental Laws including those arising from or relating to (i) any alleged violation of any Environmental Laws, (ii) fines, penalties, judgments, awards, settlements, damages, losses and investigative, remedial and inspection costs and expenses; (iii) financial responsibility for cleanup costs, corrective action, removal, remediation or other response actions, and (iv) and any other compliance, corrective or other remedial action necessary to comply with Environmental Laws.
- 1.15 Facility:** The photovoltaic electric generation equipment, inverters, controls, regulators, switches, cable and all associated facilities owned by Seller and located on the Site and between the Site and any Point of Interconnection for the generation of solar powered Energy and delivery of such Energy to Buyer.
- 1.16 FERC:** Federal Energy Regulatory Commission and any successor organization.
- 1.17 Financier:** Any individual or entity providing money or extending credit (including any capital lease, sale, or sale-leaseback) directly (or through one of its subsidiaries) to Seller for (i) the construction, term, or permanent financing of the Facility; or (ii) working capital or other ordinary business requirements for the Facility. "Financier" shall not include common trade creditors of Seller.
- 1.18 Governmental Authority:** Any nation, government, state or other political subdivision thereof, whether foreign or domestic, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any corporation or entity owned or controlled by any of the foregoing, excluding Buyer.
- 1.19 Guaranteed Price:** The prices expressed in dollars per kWh set forth in Appendix A of this Agreement and used as the basis for determining payments by Buyer to Seller for the Net Energy and associated Capacity.
- 1.20 Hazardous Substance:** Collectively (i) any "hazardous substance" or "pollutant or contaminant" as defined in Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601(4) & 9601(33); (ii) any element, compound, mixture, solution or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9602; (iii) petroleum, including crude oil or any fractal thereof; (iv) any hazardous waste having the characteristics identified under or listed pursuant to the Solid Waste Disposal Act, as amended, 42 U.S.C. Sec. 6921 et seq.; (v) any material defined as "hazardous waste" pursuant to 40 C.F.R. Parts 260 or 261; (vi) any solid waste defined as "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; (vii) any materials, substances, or wastes

regulated under, and any imminently hazardous chemical substance or mixture for which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 7 of, the Toxic Substances Control Act, 15 U.S.C. §2606 et seq.; (viii) any substance, the presence of which causes or threatens to cause a nuisance at any real property, (ix) ureaformaldehyde foam insulation; (x) asbestos and asbestos containing materials (whether friable or non-friable); (xi) any asbestos, polychlorinated biphenyl, radium or isomer of dioxin, or any material or thing containing or composed of such substance or substances; or (xii) any material now defined as “hazardous material” pursuant to 49 C.F.R. §171.8, (xiii) any substances or material regulated by the Hazardous Materials Transportation Act, 49 U.S.C. §§136, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq., or the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§1001 et seq.; and (xiii) any material or substance defined as “hazardous waste” pursuant to Applicable Laws in Iowa; in each case as amended, enforced or interpreted.

- 1.21 **Interconnection:** Construction, installation, operation, and maintenance of all Interconnection Facilities.
- 1.22 **Interconnection Facilities:** The facilities installed for the purpose of interconnecting the Facility to the Buyer System.
- 1.23 **Iowa Credits:** Renewable energy tax credits pursuant to Iowa Code Chapter 476C.1 et seq. and related laws and regulations.
- 1.24 **IUB:** The Iowa Utilities Board and any successor organization and agency.
- 1.25 **ITC:** The federal investment tax credit for facilities producing electricity from solar resources pursuant to 26 U. S. C. Section 48, as amended from time to time.
- 1.26 **kW:** Kilowatt.
- 1.27 **kWh:** Kilowatthour.
- 1.28 **MW:** Megawatt.
- 1.29 **MWh:** Megawatthour.
- 1.30 **Net Energy:** The actual number of kWh or MWh generated by the Facility during the period being considered, less any generating output in kWh or MWh used for the Facility's Station Auxiliary, and delivered to Buyer as measured by the meters installed pursuant to Section 3.1.
- 1.31 **Parties:** Buyer and Seller, and their respective successors and permitted assignees.
- 1.32 **Party:** Buyer or Seller, and their respective successors and permitted assignees.

- 1.33 Permits:** All state, federal, and local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, operation, and maintenance of the Facility.
- 1.34 Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
- 1.35 Point of Delivery:** Each point at which Buyer accepts title to and risk of loss for the Net Energy and associated Capacity sold and delivered by Seller to Buyer, and the amount of Net Energy delivered and purchased is established for purposes of billing. The Points of Delivery shall be the locations described in Appendix B.
- 1.36 Point of Interconnection:** Any point on the electrical system where the Facility is physically interconnected with the Buyer System. The Points of Interconnection are described in Appendix B.
- 1.37 Production Loss:** This term is defined in Section 5.5.
- 1.38 Prudent Electric Industry Practice:** Those methods, practices, and use of certain equipment, as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability and efficiency, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, IUB, Utility and any Applicable Law.
- 1.39 PURPA:** The Public Utility Regulation Policies Act, 16 U.S.C. §§824a-3, *et seq.*, as amended by the Energy Policy Act of 2005 and otherwise, and its implementing regulations at 18 CFR Part 292 and as promulgated by the IUB, in each case as amended.
- 1.40 Qualifying Facility or QF:** A cogeneration or small power production facility which meets the criteria as defined in PURPA, including Title 18 C.F.R. Sections 292.201 through 292.210, as amended from time to time and the regulations established by FERC, 18 C.F.R. Part 292, and any applicable Iowa laws and regulations, in each case as amended.
- 1.41 Renewable Energy Credits or RECs:** All attributes of an environmental or other nature that are created or otherwise arise from the Facility's generation of Energy using solar energy as a source of energy, either in its own right or in contrast to the generation of electricity using nuclear or fossil fuels or resources, including, but not limited to, tags, certificates or similar products or rights associated with solar as a "green" or "renewable" energy resource, including any and all environmental air quality credits, emissions reductions, allowances, offsets or other benefits related to the use of solar energy at the Facility in a manner which reduces, displaces or offsets emissions resulting from fuel combustion pursuant to any existing or future international, federal, regional, state or local legislation, regulation or agreement or voluntary agreement, and the aggregate amount of credits, offsets or other benefits related to any environmental or renewable energy credit trading program, information system or tracking system associated with the

Energy generated from the Facility, and any credits, allowances, offsets, or emission or pollution reductions for substances such as mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter, or other contaminants of air, water or soil under federal, state, regional or local law or any international regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol and similar or successor programs, agreements, laws and regulations. "RECs" does not include (i) ITCs, production tax credits, or any similar tax credits, Iowa Credits, cash grants, production incentives or similar tax or cash benefits, whether or not such tax credits or cash benefits arise from or are related to the Facility's use or generation of solar energy, for which Seller or the Facility are eligible, or which either receives, or (ii) any depreciation, credits, benefits, expenses or other local, state or federal tax treatment for which Seller or the Facility is eligible or which either receives.

- 1.42 Reporting Rights.** The right of any Person to report or publish to any Governmental Authority or any other Person that the Person owns the RECs associated with or arising from the Facility or the Net Energy.
- 1.43 Seller:** Viking Solar, LLC, an Iowa limited liability company, and its successors and assignees.
- 1.44 Site:** The real property and improvements on which the Facility is located and to which Seller has rights pursuant to the Buyer Easement. The description of the Site is set forth in Appendix C and incorporated by reference.
- 1.45 Standby Requirements:** The provisions of any applicable Utility tariff or any Applicable Law which require Buyer to reserve or purchase standby capacity, energy, transmission services, forecasting or balancing services, or ancillary services in order for Buyer to receive and use, or as a result of Buyer's receipt or use, of Net Energy from the Facility, or any similar cost or imposition imposed by Utility on Buyer and related to or arising from the Facility or delivery of the Net Energy to Buyer or use or consumption of such Net Energy or associated Capacity by Buyer.
- 1.46 Station Auxiliary:** Energy used by Seller to operate the Facility.
- 1.47 Term:** The period of time during which this Agreement is in effect, as defined in Section 2.1.
- 1.48 Trial Energy:** Any Net Energy generated by the Facility and delivered to the Point of Delivery prior to the Commercial Operation Date for the Facility.
- 1.49 Unavailable:** A physical state in which all or part of the Facility is not capable of providing Net Energy or Capacity to the Point of Interconnection, or in which any other equipment or facility is not capable of performing its intended purpose.
- 1.50 Utility:** Interstate Power & Light Company and its successors and assignees and any other Person who provides retail electric service to Buyer at any of the Buyer Improvements during the Term.

ARTICLE II - PURCHASE AND SALE

2.1 Term. (a) This Agreement shall be effective upon execution by authorized representatives of both Parties, and shall continue until the end of the twenty-fifth (25th) year after the Commercial Operation Date, unless otherwise terminated in accordance with its terms (the "Term"). Except for Trial Energy, Buyer's obligation to purchase the Net Energy and associated Capacity from the Facility, as set forth herein, shall be effective on the Commercial Operation Date.

(b) In the event IPL refuses to permit Interconnection of all portions of the Facility or net-metering of the Net Energy and sale to IPL of any Net Energy in excess of Buyer's retail load, or allows such Interconnection or net-metering or sale only at costs or upon other conditions or terms unacceptable to Buyer or Seller, and the Parties cannot successfully negotiate mutually acceptable terms with IPL and among themselves reflecting such terms and conditions, either Party shall have the right to terminate this Agreement within thirty (30) days of receipt of IPL's final studies and cost estimates upon notice to the other Party. In the event IPL refuses to interconnect only one or more portions of the Facility, or will interconnect only a Facility of a reduced size, the Parties agree to negotiate in good faith amendments to this Agreement reflecting the Facility without the disapproved portion or Capacity, and if the Parties fail to reach agreement on mutually acceptable amendments within 30 days after receipt of the applicable information or decision from IPL, either Party shall have the right to terminate this Agreement upon written notice.

2.2 Sale and Purchase. (a) Buyer agrees to purchase all Net Energy and associated Capacity during the Term and to accept delivery of the Net Energy at the Points of Delivery during the Term, subject to the terms of this Agreement. Seller agrees to deliver and sell the Net Energy and associated Capacity from the Facility to Buyer at the Points of Delivery for the Term. Except as set forth in Sections 6.5 and 8.4(b), Seller shall not contract to sell any Net Energy or associated Capacity from the Facility to any Person other than Buyer for the Term and Seller acknowledges that Buyer is entitled to receive all Net Energy and associated Capacity from the Facility during the Term.

(b) If at any time during the Term it is determined that Net Energy delivered or to be delivered at any Point of Delivery will exceed Buyer's retail electric load, Buyer will be responsible to negotiate any interconnection and sale arrangements with Utility necessary to allow the delivery and sale of any excess Net Energy to Utility.

2.3 Energy Rate.

(a) **Guaranteed Price.** From and after the Commercial Operation Date, Buyer shall pay Seller the Guaranteed Price as set forth in Appendix A for the Net Energy and associated Capacity that Seller delivers to Buyer at the Points of Delivery. Buyer and Seller agree that the applicable Guaranteed Price is intended to compensate Seller for both the Net Energy and associated Capacity delivered to Buyer, and that Seller is not entitled to a separate price or payment for the Capacity of the Facility to which Buyer is entitled.

(b) **Trial Energy.** Buyer shall purchase all Trial Energy produced by the Facility during startup and testing and delivered to a Point of Delivery. Buyer acknowledges that the Facility is located at multiple locations and that each location may become operational prior to the Commercial Operation Date. Buyer will purchase all Trial Energy produced and delivered by such portions of the Facility prior to the Commercial Operation Date at the rate set forth in Appendix A.

(c) **Production Loss.** If delivery of Buyer Energy is curtailed for reasons other than as permitted by Section 5.5, Buyer shall make payments to Seller for the Production Loss to the extent provided in, and in accordance with, Section 5.5.

2.4 Tax Credits. Seller is responsible to apply and qualify for ITCs and any other production tax credits or payments or other assistance, grants or credits which might be available to Seller or the Facility from any Governmental Authority, and Buyer agrees that Seller is entitled to receive any such credits, assistance, or grants. Seller and Buyer agree that the Guaranteed Price and other pricing set forth in this Agreement are not subject to adjustment or amendment due to Seller's receipt, or failure to receive, any such credits, assistance or grants, in whole or in part, after the date of this Agreement, including, without limitation, failure of the Facility to qualify to receive the ITC or any other assistance for any reason. Buyer specifically acknowledges that Seller is entitled to retain any Iowa Credits associated with the Net Energy and for which Seller is eligible.

2.5 Committed Nameplate Capacity. Seller agrees that the Committed Nameplate Capacity shall be approximately 921 kW (DC), and that the Committed Nameplate Capacity shall include only Capacity from the Facility.

2.6 Renewable Energy Credits. The Parties agree that the Guaranteed Price does not include compensation for the RECs and Reporting Rights associated with the Net Energy and associated Capacity purchased by Buyer pursuant to this Agreement during the Term and that Seller is retaining ownership of all such RECs and Reporting Rights and is entitled to utilize or sell or transfer any and all such RECs and Reporting Rights for purposes determined by Seller in its sole discretion. To the full extent allowed by Applicable Law, Seller shall own or be entitled to claim all such RECs and Reporting Rights to the extent such RECs and Reporting Rights may exist during the Term, and, to the extent necessary, Buyer shall assign to Seller all rights, title and authority for Seller to register, own, hold and manage such RECs and Reporting Rights in Seller's own name and to Seller's account, including any rights associated with any renewable Energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such RECs and Reporting Rights.

2.7 Authority to Contract. The Parties agree that their ability to enter into and perform this Agreement depends in part on decisions by the Iowa Supreme Court permitting retail utility customers to purchase Energy and Capacity from independent power producers without violating Applicable Law. In the event that the judicial opinions are reversed or modified in a material way, or legislation is enacted which adversely affects the validity of this Agreement, the Parties agree to either (i) amend the Agreement to address the changes in law to the extent necessary to preserve the validity of the Agreement, or (ii)

devise an alternative legal arrangement pursuant to which Buyer continues to receive the Net Energy and associated Capacity from the Facility and Seller meets its financial obligations and expectations.

ARTICLE III - METERING AND BILLING

3.1 Metering Requirements.

The transfer of electric Capacity and Energy between Seller and Buyer shall be measured by metering equipment installed at each Point of Delivery or as otherwise agreed. If metering or measurement equipment is installed at a location other than at a Point of Delivery, the applicable meter will be compensated or meter readings will be adjusted to reflect losses from the metering equipment to the applicable Point of Delivery. If the metering equipment fails to register, or is found upon testing to be inaccurate by more than one percent (1.0%) (for a mechanical meter) or three tenths of a percent (.3%) (for an electronic meter), an adjustment shall be made correcting all measurements by the inaccurate or defective device using the best-available information, provided that such correction shall be limited to no more than the preceding one hundred eighty (180) days prior to the discovery of the error. Seller shall provide Buyer access to all metering equipment for any purposes necessary under this Agreement, including real-time read capabilities, and shall provide Buyer with the reasonable opportunity to be present at any time the metering equipment is to be inspected and tested or adjusted. Either Party may install back-up metering at its own expense, provided that such back-up metering, to be used for the purposes of this section, shall meet the same technical standards applicable to the metering equipment described above.

3.2 Billing. The meters described in Section 3.1(a) shall be read by Seller approximately once a month. Within five (5) days of the date on which the meters are read, Seller shall send Buyer an invoice for Net Energy in accordance with the price terms of this Agreement. Seller's invoice shall include information reasonably requested by Buyer for billing and payment purposes in a form acceptable to Buyer.

3.3 Billing and Payment Records. To facilitate payment and verification, Seller shall maintain all books and records necessary for billing and payments, including without limitation copies of all invoices and curtailment data with respect to the Facility for a period of at least two (2) years, and Seller shall grant Buyer reasonable access to those books, records and data on the premises of the Facility or at the principal place of business of Seller. Subject to the provisions of Section 10.13, Buyer may examine such books and records relating to billing and payment transactions under the administration of this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours, for the purpose of verifying Seller's performance of its obligations under this Agreement.

3.4 Payment. If Seller's monthly invoice to Buyer is received on or before the first of the month, Buyer will approve the invoice at its next regular meeting and Buyer's payment to Seller for Net Energy shall be made by mail or electronically no later than ten (10) days following the date of the meeting. If such due date falls on a weekend or legal

holiday, such due date shall be the next working day. Payments posted after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to two percent (2%) plus the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of *The Wall Street Journal* for the days of the late payment period multiplied by the number of days elapsed from and including the day after the due date, to and including the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

- 3.5 Wire Transfer.** Buyer shall make payment of bills via wire transfer of funds or other electronic means if requested in writing by Seller, at Seller's sole expense, and if the request contains adequate payment information. Buyer shall be entitled to conclusively presume, without any liability whatsoever, that the payment information furnished by Seller (for example, name, financial institution, account numbers, and payee) is accurate. In no event will Buyer be required to pay any bill more than once when the invoice was first paid in accordance with Seller's instructions.

ARTICLE IV - SELLER'S OBLIGATIONS

During the Term of this Agreement, Seller hereby agrees to be bound by and to perform the following affirmative obligations:

4.1 Design, Construction and Operation of the Facility.

Seller shall:

- (a) Design and construct the Facility, Interconnection Facilities and any related facilities in accordance with Prudent Electric Industry Practice. Seller shall contract with Perry Novak Electric, Inc. ("PNE") to design, procure and install the Facility, and shall cause PNE to procure the equipment and install the Facility as designated in the bid submitted by PNE to Buyer dated May 5, 2016 without material change, unless approved by Buyer. PNE shall warrant its work, and provide maintenance services for the Facility for a period of at least 5 years on terms to be agreed by PNE and Seller.
- (b) Seek, obtain, maintain, comply with and, as necessary, renew and modify, the Permits and all other permits, certificates or other authorizations that are required by any Applicable Law or Governmental Authority as prerequisites to engaging in the activities required of Seller by this Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of this Agreement, but excluding any approvals for which Buyer is responsible pursuant to this Agreement.
- (c) Operate, maintain, and repair the Facility in accordance with this Agreement, Applicable Law, Permits, and in accordance with Prudent Electric Industry Practice.
- (d) Seller shall not permit any sex offender who has been convicted of a sex offense against a minor to operate, manage, be employed by, or act as a contractor for, Seller at the Site or Buyer Property, and Seller shall require PNE and its subcontractors to not employ any such Person at the Site or Buyer Property in accordance with the

requirements of Iowa Code Section 692A.113 (2015) in the performance of the obligations of Seller under this Agreement. Seller shall certify to Buyer prior to the commencement of construction at the Site that it has complied with this requirement.

4.2 General Obligations.

(a) Seller, during the Term of this Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller or the Facility or by reason of the sale of Net Energy under this Agreement. Seller shall pay any personal property taxes levied or assessed against the Facility.

(b) Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority and as otherwise required by Prudent Electric Industry Practice.

(c) Seller shall continue (i) to the extent applicable, to preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to obtain and maintain all permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; and (ii) to comply with Applicable Laws.

(d) To the extent required by Applicable Law for Seller to make the sales of Net Energy required by this Agreement, Seller shall certify the Facility as a QF with FERC under PURPA prior to the Commercial Operation Date and maintain such status throughout the Term, and comply with all other applicable requirements of PURPA and FERC during the Term. Seller shall be responsible for any other filings or approvals with FERC necessary to perform its obligations under this Agreement.

(e) Unless otherwise agreed by the Parties, Seller shall (i) provide its own Station Auxiliary from the output of the Facility when it is operating and (ii) be responsible for obtaining any additional Station Auxiliary required by the Facility from Buyer or IPL at Buyer's or IPL's applicable rates pursuant to a separate agreement.

4.3 Utility Agreements.

Seller shall be responsible for negotiating, entering into, and performing any agreement with the Utility and any other necessary Persons for design, installation and operation of the Interconnection Facilities on Buyer's side of any Point of Interconnection necessary to permit delivery and transformation of the Net Energy and associated Capacity to any Point of Delivery and any Point of Interconnection. Buyer shall provide the Utility written permission to release any information needed to Seller.

4.4 No Representations.

Seller makes no representation or warranty as to the likelihood that the Facility will generate any particular amount of Energy during any particular period of time or that the Net Energy and associated Capacity will offset any particular amount of Energy or

Capacity that otherwise would be purchased by Buyer from Utility. Buyer acknowledges that the operation of the Facility is subject to adverse weather, lack of sunlight, and other events beyond the control of Seller that may interrupt or prevent Energy production, and that Buyer's benefits from Net Energy and associated Capacity received will also be affected by the terms of any applicable retail tariffs governing electric service from Utility to Buyer. Any representation by Seller to Buyer as to expected Energy or Capacity production from the Facility or the amount of expected benefits to be received by Buyer from the Facility is purely an estimate based on the information available to Seller at the time and is not a guarantee that any such production will occur or that such an amount of benefits will be received by Buyer at any time.

- 4.5 Schedule.** Seller shall use all commercially reasonable efforts to complete installation of the Facility and attain Commercial Operation no later than December 31, 2016.
- 4.6 Environmental Contamination.** Seller shall not use, store, handle, dispose of, or release on the Site, Buyer Property, or any adjacent real property or cause or permit to exist or be used, handled, stored, disposed of, or released on the Site or any adjacent real property as a result of Seller's activities, any Hazardous Substances, except in such quantities as may be required in its normal business practices and only if such use is in full compliance with all Environmental Laws. Seller shall comply with all Environmental Laws during its performance of the obligations of this Agreement and shall be responsible for any Environmental Liability arising from Seller's performance of this Agreement, the Facility, or any other activities of Seller with respect to the Facility.

ARTICLE V - BUYER OBLIGATIONS; CURTAILMENT

- 5.1 Cooperation.** Buyer agrees to reasonably cooperate with Seller in any applications that Seller is making for tax credits, grants, or assistance, at Buyer's expense. Buyer's obligation shall consist only of providing nonproprietary information in its possession, custody, or control necessary to complete any such applications, responding to requests from the relevant Governmental Authorities, and similar activities.
- 5.2 Collateral Assignments; Financing.**
- (a) Seller will be responsible for obtaining any debt, equity, or other financing required to procure, install and operate the Facility. Buyer agrees to provide any real estate title information or other data with respect to the Site and Buyer Property, estoppel certificates, consents or other documents reasonably required by any Financier in conjunction with financing of the Facility.
- (b) Subject to the terms and conditions of this Agreement, Buyer shall, upon request by Seller, execute a commercially reasonable consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to Buyer; provided that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(c) Buyer further acknowledges that the Financiers may have other or further requests with respect to the assignment of this Agreement (such as requests for legal opinions or certificates from Buyer) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer will consider any such requests and will reasonably cooperate and negotiate any such consent and agreement or assignment in good faith.

5.3 Facility Ownership.

The Facility and all related facilities and equipment owned and operated by Seller shall remain the sole property of Seller, and Buyer acknowledges that it has no title, ownership or other interest in the Facility or any of Seller's facilities and equipment. The Facility shall remain the personal property of Seller irrespective of whether the Facility or any portion of the Facility is deemed to be a fixture or otherwise a part of the real or personal property comprising the Site or Buyer Property. Buyer acknowledges that it may not sell, transfer, lease, assign, mortgage or otherwise encumber the Facility, and any sale or conveyance of the Buyer Property or Site shall be subject to the easement interests of Seller in the applicable Buyer Easement, and this Agreement and Seller's easement rights shall run with the Buyer Property and Site (as defined in the applicable Buyer Easement).

5.4 Seller Curtailment. Seller shall not limit or curtail deliveries of Energy from any portion of the Facility except in the event and to the extent of (i) a Force Majeure; (ii) an outage of the Buyer System that prevents Buyer from physically accepting delivery; (iii) an Event of Default by Buyer; (iv) regular or unplanned maintenance for the Facility; or (v) an authorized instruction from Utility or Buyer to limit or curtail delivery of Energy. Seller shall use commercially reasonable efforts to schedule any Facility maintenance during periods when the Facility would otherwise not be producing Energy.

5.5 Buyer Curtailment. Buyer shall have no right to curtail its receipt of Net Energy from any portion of the Facility for any reason except as set forth herein. Seller shall not be required to curtail generation from the Facility or Net Energy delivered to Buyer except in the case, and to the extent, of (i) Force Majeure, or (ii) an emergency outage of the Buyer System that prevents Buyer from physically accepting delivery, (iii) an authorized instruction from Utility or a Government Authority to curtail delivery, or (iv) maintenance of the Buyer System requiring an outage of no more than 24 hours, provided that Buyer uses reasonable efforts to schedule any such outage for a period when the applicable portion of the Facility is not operating. In the event Buyer refuses or fails to accept delivery of any Net Energy for any other reason, Seller shall calculate the amount of Net Energy it would have produced and delivered to Buyer but for Buyer's actions using the best available data as to the production capability of the Facility during the applicable period and the solar resource available during the applicable time in which curtailment occurred. The calculation shall take into consideration any actual operating experience of the Facility. The amount of Net Energy lost during the period of curtailment (the "Production Loss") shall be included with any Net Energy actually delivered to Buyer during the applicable billing period and Buyer shall be obligated to pay Seller in accordance with Section 3.4 as if such Production Loss had been delivered to Buyer.

- 5.6 Title and Risk of Loss.** As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Facility up to and until delivery and receipt by Buyer at any Point of Delivery, and Buyer shall be deemed to be in control of the Net Energy from and after delivery and receipt at any Point of Delivery. Title and risk of loss related to the Net Energy and related Capacity shall transfer to Buyer at the applicable Point of Delivery. Except as otherwise set forth in this Agreement, Buyer shall be responsible for all improvements to the Buyer System on Buyer's side of each Point of Delivery necessary to accept delivery of and utilize the Net Energy, at Buyer's sole cost.
- 5.7 Buyer Easement.** Buyer agrees to cooperate with Seller in its performance of the Buyer Easement, including provision of all design and construction information regarding the Buyer Improvements and Buyer System necessary for Seller to design the Facility. In addition, Buyer grants Seller the right to access the electrical service rooms or other portions of the Buyer System in the Buyer Improvements at all times as necessary to install, operate and maintain the Interconnection Facilities and Facility, subject only to reasonable restrictions of Buyer for safety and security of its employees and invitees, as set forth in the Buyer Easement. The Parties shall cooperate to establish appropriate access procedures.
- 5.8 Standby Requirements.** In the event that Buyer becomes subject to any Standby Requirements as a result of the Facility or its use or consumption of Net Energy and associated Capacity from the Facility, the costs of any such Standby Requirements shall be the responsibility of Buyer.
- 5.9 Roof Replacement.** During the Term, one or more of the rooftops comprising the Site may need reroofing, which will require temporary relocation of the applicable portion of the Facility. Seller will pay for the relocation of each applicable portion of the Facility once during the Term if it occurs after the first nine years of the Term. Otherwise, the costs of relocation and reinstallation shall be paid by Buyer. Seller agrees that any Production Loss arising from interruption or reduction in production and delivery of Net Energy to Buyer caused by any such relocation and reinstallation shall be a permissible curtailment by Buyer pursuant to Section 5.5 for the first six (6) days of any such curtailment. After that time, Buyer shall reimburse Seller for any Production Loss as a reimbursable curtailment pursuant to Section 5.5.
- 5.10 Design and Support Facilities.** Seller shall provide Buyer with the expected weight, wind loading, and other information available to Seller necessary for Buyer to analyze the ability of each rooftop in the Site to support its respective proposed portion of the Facility. Buyer will undertake any structural engineering or related analysis to confirm the structural suitability of each roof for its proposed array, at Buyer's cost, and for the costs of any necessary structural reinforcement or other improvements necessary to make each rooftop suitable to support its proposed array. Buyer shall also provide internet service necessary at each Facility location for remote monitoring and related services at the Facility, at Buyer's expense.
- 5.11 Buyer Environmental Liability.** As between the Parties, Buyer shall be responsible for any pre-existing condition at or on the Site or Buyer Property, including any

Environmental Liability arising from Hazardous Substances already present at the Site or Buyer Property or any other geologically or hydrologically adjoining property that may impact the Site. Nothing contained in this Agreement or the Interconnection Agreement shall require, or be construed to require, Buyer to remediate or be responsible for any such Environmental Liability or to assume the status of a generator, storer, transporter, treater or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., or within any state statute governing the generation, treatment, storage, and disposal of waste.

- 5.12 Demolition of Building.** In the event Buyer elects during the Term to sell or demolish all or any material part of any of the Buyer Improvements, which requires Seller to remove the corresponding part of the Facility, Buyer shall notify Seller as soon as practicable in advance of the expected decision, and the Parties shall meet in good faith to discuss options for relocation and reuse of the affected portion of the Facility to serve Buyer which would mitigate revenue losses to Seller. The costs incurred by Seller to remove the applicable portion of the Facility shall be reimbursed by Buyer, and Buyer shall pay to Seller a termination fee equal to (i) the estimated production of Net Energy from the applicable portion of the Facility for the balance of the Term multiplied by the applicable Guaranteed Prices, (ii) discounted to net present value at a rate to be agreed by the Parties. The calculation shall be reduced to take into consideration any revenues from a relocation and use to serve Buyer, or from Seller's ability to reuse the applicable equipment for other purposes. Payment to Seller shall be due within thirty (30) days after removal of the applicable portion of the Facility. This Section 5.12 shall apply to a decision by Buyer to close a school building on which a portion of the Facility is located as an attendance center.

ARTICLE VI - FORCE MAJEURE

- 6.1 Force Majeure.** The performance of each Party under this Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, that, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to an Emergency, a Force Majeure event on the Utility System to the extent it causes the Facility to be physically incapable of delivering Energy or Buyer from receiving Energy at any Point of Delivery; flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism, strike, and act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty.
- 6.2 Remedial Action.** A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to

remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed.

6.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in this Agreement to the contrary, "Force Majeure" shall not mean:

(a) General inclement weather normally experienced within the vicinity of the Site and affecting construction, start-up, operation, or decommissioning of the Facility or related facilities or the Buyer Improvements.

(b) Changes in market conditions, governmental action, or weather conditions that affect the cost of Seller's supply of Net Energy from the Facility.

(c) Unavailability of sunlight.

(d) Unavailability of equipment, repairs or spare parts for the Facility or Buyer System, except to the extent due to a qualifying event of Force Majeure.

(e) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit.

(f) Litigation or administrative or judicial action pertaining to this Agreement, the Site, the Facility, Buyer Property, the acquisition, maintenance or renewal of financing or any Permits, or the design, construction, maintenance or operation of the Facility or Buyer Improvements.

(g) Any acts or omissions of any third party, including, without limitation, Seller or any vendor or supplier of Seller, except to the extent due to a qualifying event of Force Majeure.

(h) Any mechanical or equipment breakdown at the Facility or Buyer Improvements or events or conditions attributable to normal wear and tear or flaws or failure to operate or maintain such component in accordance with Prudent Electric Industry Practice, unless such mishap is caused by a qualifying event of Force Majeure.

6.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, but no later than twenty-four (24) hours after the occurrence or the Party's knowledge of the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

6.5 Casualty Event. If as a result of a Force Majeure, the Facility is substantially destroyed, and available insurance proceeds are not sufficient to replace the Facility, Seller may terminate this Agreement in the absence of an agreement by the Parties to an amendment which permits the installation of a new facility. If as a result of a Force Majeure the Buyer Improvements are substantially destroyed, and Buyer elects not to replace or reconstruct the Buyer Improvements, Buyer or Seller may terminate this Agreement. If

only a portion of the Facility or Buyer Improvements are destroyed, the Parties shall negotiate and execute an amendment to this Agreement to reflect a corresponding reduction in the size of the Facility. During any period of time in which Buyer is unable to accept or use the Net Energy from the Facility due to a Force Majeure, Seller shall be entitled to sell the Net Energy and associated Capacity to any other Person without violating Section 2.2.

ARTICLE VII - Purchase Option

- 7.1 Purchase Option.** Seller grants Buyer the option to purchase the Facility and all the personal property and equipment related to the Facility on the Site, together with Seller's rights under any Permits necessary to operate the Facility and under any warranties for the equipment comprising the Facility and any contracts with Utility for interconnection of the Facility (collectively, the "Facility Property") commencing at the end of the seventh full year after the Commercial Operation Date. In order to exercise its option, Buyer shall provide written notice to Seller of its intent to exercise the option no less than one hundred eighty (180) days prior to the proposed effective date of the purchase.
- 7.2 Terms of Purchase.** The purchase price for the Facility Property in all cases shall be the fair market value. Fair market value shall be considered to be the amount equal to any alternative firm and bona fide offer to purchase the Facility Property from a Person willing and able to make the proposed purchase, an amount agreed to by the Parties using the factors set forth in Exhibit D, or, in the absence of a qualifying third-party offer or agreement among the Parties, an amount established by appraisal. In the event an appraisal is necessary, within thirty (30) days of Buyer's notice of exercise of option, the Parties shall select a mutually acceptable, independent, appraiser qualified in the valuation of solar energy facilities to appraise the Facility Property. Seller shall cooperate to provide all information to the appraiser regarding the Facility Property necessary for the determination of fair market value. The appraiser shall complete the appraisal within sixty (60) days of receipt of all such data. The cost of the appraisal shall be paid by Buyer in addition to the purchase price. Upon receipt of the appraised value, the purchase price shall be established as the appraised value.
- 7.3 Closing.** Upon determination of the applicable purchase price, the Parties shall use all commercially reasonable efforts to close on the sale as soon as practicable but in any event within sixty (60) days. Upon payment of the purchase price, Seller shall execute and deliver to Buyer all instruments necessary to effect transfer of ownership of the Facility Property to Buyer, subject only to the lien of Financiers the obligations of which Buyer elects to assume. Buyer shall be responsible for payment of all amounts due and owing to Financiers from and after the date of closing, if it elects to assume such obligations. Otherwise, Seller shall pay all such amounts due and owing its Financiers and remove any related liens within thirty (30) days after receipt of the purchase price. After Buyer's exercise of its purchase option and continuing through closing on any resulting sale, Seller agrees to maintain the physical Facility Property in reasonable condition and to perform its contractual and other obligations under agreements comprising any portion of the Facility Property.

7.4 Cure of Default. To the extent Seller is in default of its obligations under this Agreement at the time of the closing on Buyer's purchase option pursuant to Section 7.1, any amounts owing by Seller to Buyer shall be deducted from the purchase price. Buyer's exercise of its option to purchase the Facility Property pursuant to Section 7.1 and its closing on the purchase and payment of the purchase price shall constitute a waiver of any existing Events of Default by Seller, and shall terminate this Agreement in its entirety. Events of Default by either Party existing at the time of a sale of the Facility Property at the end of the Term shall be taken in to consideration in determining the purchase price wherever possible, and otherwise shall not be extinguished by the sale. The Facility Property will be sold and conveyed by Seller as-is, where-is, and Buyer shall have no further remedies against Seller with respect to the Facility Property or this Agreement, except to the extent Seller fails to maintain the Facility Property between the completion of the appraisal and the date of closing.

ARTICLE VIII - TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

(a) Buyer breaches any curable, non-monetary, material obligation under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notification from Seller of the breach.

(b) After the Commercial Operation Date, for any reason other than an event of Force Majeure or an Event of Default by Seller, and except as contemplated by Section 5.5 when Seller is being compensated, Buyer refuses to accept and purchase Net Energy.

(c) Buyer fails to make any material payment due under this Agreement within ten (10) days after such payment is past due.

(d) Any other material breach of this Agreement not specifically enumerated, that is not cured within thirty (30) days after Buyer receives written notification of default from Seller.

8.2 Events of Default by Seller. The following shall each constitute an Event of Default by Seller:

(a) Seller breaches any curable material obligation under this Agreement and fails to cure the breach within thirty (30) days after receiving written notification from Buyer of the breach.

(b) Any other material breach of this Agreement not specifically enumerated, which is not cured within thirty (30) days after Seller receives written notification of default from Buyer.

8.3 Termination.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.1 or 8.2, as applicable, or upon the occurrence of an incurable Event of Default, the non-defaulting Party may terminate this Agreement by notifying the defaulting Party in writing of its decision to terminate and the effective date of the termination.

(b) Upon termination of this Agreement by Buyer due to an Event of Default by Seller pursuant to Section 8.3(a), Buyer shall have no future or further obligation to purchase the Capacity, Net Energy of the Facility or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination. Upon termination of this Agreement by Seller due to an Event of Default by Buyer pursuant to Section 8.3(a), Seller shall have no future or further obligation to deliver the Capacity, Net Energy of the Facility to Buyer or to satisfy any other obligation of this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination.

(c) Notwithstanding any provisions in this Agreement to the contrary, upon the occurrence of an Event of Default by Seller, Buyer shall provide notice of the Event of Default to each Financier for which an address or other contact information has been provided to Buyer by Seller. Each Financier shall have the right to cure the Event of Default on behalf of Seller within the cure periods set forth in Section 8.2, and Buyer agrees to accept any such cure to the same extent as if made by Seller. If Financier needs to foreclose on the Facility or otherwise take legal action to gain possession of the Facility in order to cure the applicable Event of Default, the applicable cure period shall be extended by the amount of time necessary for the Financier, using all reasonable due diligence, to obtain possession of the Facility. If a Financier or its designee, obtains possession of the Facility and assumes all of the obligations of Seller under this Agreement, and cures any Event of Default, Buyer agrees to recognize the Financier, or its designee, as Seller under this Agreement and to perform its obligations to Financier or its designee.

(d) If an Event of Default by Seller will require more than the prescribed cure period to cure, and Seller is diligently pursuing a cure, as reasonably demonstrated to Buyer, then the applicable cure period shall be extended up to an additional ninety (90) days as long as Seller is diligently pursuing the cure. This provision shall not apply to payment defaults.

(e) If the Parties are engaged in a dispute as to whether an Event of Default has occurred or whether a Party has the right to terminate this Agreement, and the Parties are handling the dispute through the procedures established in Article IX, the Party claiming the Event of Default or the right to terminate shall not be entitled to terminate this Agreement until a ruling by the applicable court or other decision-maker is received pursuant to Section 9.1.

8.4 Other Damages.

(a) For all claims, causes of action and damages the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Sections 8.1 and 8.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 8.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Agreement.

(b) Except as otherwise specifically and expressly provided in this Agreement, no Party shall be liable to the other Party under this Agreement for any indirect, special, punitive, exemplary, incidental or consequential damages, including, without limitation, loss of use, loss of revenues, loss of profit, interest charges, cost of capital, or claims of customers to which service is made, whether arising under statute or in tort or contract. Notwithstanding the foregoing, in the event that Buyer breaches this Agreement by failing to purchase or accept delivery of Net Energy and associated Capacity (except as contemplated by Section 5.5 when Seller is being compensated), Seller shall be entitled to seek damages measured by the difference between the amounts Seller would otherwise have been paid under this Agreement for such Net Energy and associated Capacity if it had been purchased or accepted for delivery by Buyer and the costs saved by (i) offsetting retail purchases from Buyer, or (ii) in the event Seller sells such Energy and Capacity to a third party following Buyer's default, the price Seller received for such Energy and Capacity sold to a third party. In no event shall one Party's liability to the other exceed any limit of liability established for either Party under any Applicable Law.

8.5 Indemnification.

(a) Seller and Buyer agree to defend, indemnify, and hold each other, and their respective officers, directors, employees, and agents, harmless from and against all damages for personal injury or death to Persons and damage to each other's physical property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by the negligent or intentional acts, errors, or omissions of the indemnifying Party. Furthermore, each Party shall defend, indemnify, and hold the other harmless from and against all damages that are or were incurred or suffered by the indemnified Party and that relate to the indemnifying Party's breach or failure to perform any of the covenants, agreements, obligations, representations, or warranties contained in this Agreement. Nothing in this Section 8.5 shall relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for Damages resulting from its sole negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

8.6 Insurance. The Parties agree to provide and maintain the respective insurance coverages described in Exhibit E. Seller shall cause PNE to procure and maintain the insurance coverages described for Seller in Exhibit E beginning prior to the start of any physical construction of the Facility through the Commercial Operation Date and for any period of time in which PNE is providing operation and maintenance services for the Facility.

ARTICLE IX - DISPUTE RESOLUTION

9.1 Negotiation. Prior to initiation of any formal action or suit, authorized representatives designated by the Parties shall meet for the purposes of discussing and resolving the controversy or claim. The Parties agree to participate in negotiations for a period of thirty (30) days, which period may be extended by agreement. If the Parties are not successful in resolving the dispute through such negotiations, then the applicable Party may seek resolution of the claim in a state court in Iowa with jurisdiction over the dispute.

ARTICLE X - MISCELLANEOUS

10.1 No Assignment.

(a) The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment of this Agreement in the absence of any consent required by this Section 10.1 shall be void.

(b) Buyer's consent shall not be required for Seller to assign this Agreement for collateral purposes to any Financier as long as the proposed assignment does not affect Seller's obligations to Buyer under this Agreement. Seller shall notify Buyer of any such assignment, and the identity and contact information for the Financier, within ten (10) days of the assignment.

10.2 Notices. Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by U. S. certified mail, return receipt requested, with postage prepaid, to:

Iowa Falls Community School District
Attn: Dr. John Robbins
710 North Street
Iowa Falls, IA 50126
(641) 648-6400
jrobbins@ifacadets.net

on behalf of Buyer; and to:

Viking Solar, LLC
Attn: Kelly Batchelder
1004 Breuning Drive
Decorah, Iowa 52101

(563) 380-1221

on behalf of Seller. The designation and titles of the Person to be notified or the address of such Person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile, on the next business day if delivered by overnight courier, and on the fifth business day after deposit by the sending Party in U.S. certified mail.

- 10.3 Captions.** All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.
- 10.4 No Third-Party Beneficiary.** Except for the rights of Financiers, no provision of this Agreement is intended to nor shall it, in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.
- 10.5 Integration; Amendment.** This Agreement, together with all appendices and exhibits attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
- 10.6 Governing Law.** This Agreement is made in the State of Iowa without regard to its conflict of laws provisions and shall be interpreted and governed by the laws of the State of Iowa or the laws of the United States, as applicable.
- 10.7 Relationship of Parties.**
- (a) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- (b) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.
- (c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under this

Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee or agent.

10.8 Good Faith and Fair Dealing; Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

10.9 Severability. Should any provision of this Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable best endeavors to agree on the replacement of any void, illegal, or unenforceable provision with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

10.10 Cooperation. The Parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

10.11 Counterparts. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Signatures transmitted electronically in pdf or equivalent format shall be considered delivered.

10.12 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually-agreed-upon joint press release to be issued as of the Effective Date describing the location, size, type and timing of the Facility, the long-term nature of this Agreement, and other relevant factual information about the relationship. Each Party shall notify the other Party when it has been contacted by and responded to a substantive inquiry from the media in regards to the Facility.

10.13 Confidentiality

(a) The Parties acknowledge and agree that during the course of the performance of their respective obligations under this Agreement, either Party may need to provide information to the other Party, which the disclosing Party deems confidential, proprietary or trade secret (“Confidential Information”).

(i) Confidential Information shall be designated as proprietary or trade secret by clear and distinct notation on such documentation or by equivalent

method, and shall be treated as such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; provided, however, that any and all data and documentation regarding detailed Facility design, component costs, and financing or Seller's financial performance, shall be considered Confidential Information without the need for further designation. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information only for the purposes of this Agreement, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Section, to use it only for work necessary to the performance of this Agreement, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others.

(ii) Confidential Information shall not include any data or information:

- A. Which was in the public domain as allowed by this Section 10.13, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;
- B. Which was independently developed by the receiving Party;
- C. Which was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this Agreement by the receiving Party.

D. Data available to Buyer about the operation and output of the Facility,

(b) A Party may, in connection with its performance of its obligations under this Agreement, disclose Confidential Information of the other Party to its attorneys, consultants or contractors, as long as such Persons are subject to the same restrictions as the receiving Party with respect to confidentiality as is required by this Agreement.

(c) In the event a third party requests that Buyer disclose Confidential Information of Seller pursuant to the Iowa Public Records law, or such information is requested by a Governmental Authority, Buyer will promptly notify Seller and Seller shall have the opportunity to take such action as it deems appropriate to protect against the disclosure or to protect the confidentiality of the applicable Confidential Information. Seller shall reimburse Buyer for any reasonable and actual costs incurred by Buyer with respect to Seller's actions in opposition to any such disclosure.

(d) Seller acknowledges that Buyer is a public entity and is subject to requirements of Iowa law as to disclosure of information received from Seller.

10.14 Forward Contract. The Parties agree that the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States

Bankruptcy Code and the Parties further acknowledge and agree that that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

Dated: August ____, 2016

IOWA FALLS COMMUNITY SCHOOL DISTRICT, an Iowa public school corporation

By: _____

Name: _____

Its: Board President

Dated: August ____, 2016

Viking Solar, LLC, an Iowa limited liability company

By: _____

Name: _____

Title: _____

APPENDIX A

Guaranteed Price

| Year | Pricing (\$/kWh) |
|--|-------------------------|
| First Commercial Operation Year | 0.085 |
| Second Commercial Operation Year | 0.0869 |
| Third Commercial Operation Year | 0.0889 |
| Fourth Commercial Operation Year | 0.0909 |
| Fifth Commercial Operation Year | 0.0929 |
| Sixth Commercial Operation Year | 0.095 |
| Seventh Commercial Operation Year | 0.0971 |
| Eighth Commercial Operation Year | 0.0993 |
| Ninth Commercial Operation Year | 0.10156 |
| Tenth Commercial Operation Year | 0.10385 |
| Eleventh Commercial Operation Year | 0.10618 |
| Twelfth Commercial Operation Year | 0.10857 |
| Thirteenth Commercial Operation Year | 0.111 |
| Fourteenth Commercial Operation Year | 0.11351 |
| Fifteenth Commercial Operation Year | 0.11607 |
| Sixteenth Commercial Operation Year | 0.11868 |
| Seventeenth Commercial Operation Year | 0.12135 |
| Eighteenth Commercial Operation Year | 0.12408 |
| Nineteenth Commercial Operation Year | 0.12687 |
| Twentieth Commercial Operation Year | 0.12972 |
| Twenty First Commercial Operation Year | 0.13264 |

| | |
|---|---------|
| Twenty Second Commercial Operation Year | 0.13563 |
| Twenty Third Commercial Operation Year | 0.13868 |
| Twenty Fourth Commercial Operation Year | 0.1418 |
| Twenty Fifth Commercial Operation Year | 0.14499 |

Trial Energy shall be purchased by Buyer at the rate of \$0.08/kWh.

APPENDIX B

Points of Interconnection and Delivery

1. Pineview Elementary, 1510 Washington Avenue. The roof-mounted array will interconnect with the electric system for the Buyer Improvements at 240V at a point on Buyer's side of the Utility service connection on the south side of the building.
2. Rock Run Elementary, 710 North Street. The roof-mounted array will interconnect with the electric system for the Buyer Improvements at 240V at a point on Buyer's side of the Utility service connection on the west side of the building..
- 3, Riverbend Middle School, 1124 Union Street. The roof-mounted array will interconnect with the electric system for the Buyer Improvements at 240V at a point on Buyer's side of the service connection with Utility on the west-northwest side of the building.
4. Bus Garage, 801 Cadet Road. The roof-mounted array will be on the south facing roof of the building and will interconnect with the building's electric system on the Buyer's side of the Utility service connection on the north side of the building.
5. Iowa Falls-Alden High School, 1903 Taylor. Multiple roof-mounted arrays will interconnect with the electric service for the buildings at three points on the Buyer's side of the service connections with Utility.

Each point of physical interconnection shall also be a Point of Delivery.

APPENDIX C

Description of the Site

1. Pineview Elementary School, 1510 Washington Avenue. This portion of the Site consists of all rooftop area above existing buildings together with any transmission and access easements needed to connect the Facility to the school electric system and access the Facility for construction and maintenance.
2. Rock Run Elementary School, 710 North Street. This portion of the Site consists of all rooftop area above existing buildings together any transmission and access easements needed to connect the Facility to the school electric system and access the Facility for construction and maintenance.
3. Riverbend Middle School, 1124 Union Street. This portion of the Site consists of all rooftop area above existing buildings together with any transmission and access easements needed to connect the Facility to the school electric system and access the Facility for construction and maintenance.
4. Bus Garage, 810 Cadet Road. This portion of the Site consists of all south-facing rooftop area above the existing building together with any transmission and access easements needed to connect the Facility to the school electric system and access the Facility for construction and maintenance.
5. Iowa Falls-Alden High School, 1903 Taylor Street. This portion of the Site consists of all rooftop areas above existing buildings together with any transmission and access easements needed to connect the Facility to the school electric system and access the Facility for construction and maintenance.

EXHIBIT D

Facility Property Purchase Price

1. The Fair Market Value (“FMV”) of the Facility Property after the No Tax Effect Date shall be determined taking into consideration the following factors, except to the extent another method is required by the Internal Revenue Service or applicable Governmental Authority to comply with applicable tax laws or regulations.

2. Factors to be considered include, as and to the extent relevant:

Expected Facility life given then current condition and reasonable maintenance, and risks that Facility or portions thereof may not last full life or Term, or may require substantial investment

Expected life of host facilities and any material changes in electric use at each site

Historical production and reasonable estimates of expected degradation and production for the remainder of the expected Facility life

Expected cost of electricity Buyer would purchase from IPL or another provider from the purchase date and through the estimated Facility life

Expected cost of Net Energy to Buyer at Contract Prices for the balance of the Facility life/Term using projected output

Projected Facility expenses for property/production taxes, insurance, equipment replacement, maintenance, and other expenses through Facility life, including any prepaid warranty or other expenses

Expected value of RECs over the remaining Facility life/Term

The discounted present value of the expected net income/benefits to Buyer and Seller using above inputs over the remaining Facility life/Term

Cost to remove and reinstall the Facility, or salvage value

State of available solar technology at the time and cost to replace the Facility with such equipment

If as a result of the purchase of the Facility Property by Buyer, Seller or its members will incur adverse tax consequences in the form of depreciation recapture, repayment of tax credits or grants, or similar events, the after tax consequences to Seller and all its members.

EXHIBIT E

Insurance Requirements

INSURANCE REQUIREMENTS

- 1.0 Seller shall procure and maintain throughout the Term, at its own expense, the following policies of insurance:
 - A. Workers' Compensation and Employer's Liability insurance that complies with the laws of Iowa to the extent of statutory limits, if applicable;
 - B. Comprehensive or Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Agreement, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, and products/completed operations liability coverage;
 - C. Comprehensive automobile liability insurance to the extent applicable with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired, or non-owned; and
 - D. All other insurance required by regulation or law as deemed appropriate by Seller.
- 2.0 The amounts of insurance required above may be satisfied by Seller buying primary coverage in the amounts specified or by buying a separate excess umbrella liability policy together with the lower limit primary underlying coverage. The structure of the coverage is Seller's option, as long as the total amount of insurance meets the requirements of this Agreement.
- 3.0 The policies required of Seller shall be "occurrence" form policies. Seller may not use "claims-made" form coverage to meet its obligations without the prior written consent of each such policy from Buyer.
- 4.0 Seller's Commercial General Liability policy and Umbrella or Excess Liability policies, and any separate property or inland marine policies with respect to the Facility, shall include each of the following endorsements, and its Workers' Compensation, Employers Liability and automobile liability policies shall include the endorsements listed below in paragraphs c and f:
 - a. Buyer and its elected and appointed officials, directors, officers, managers, supervisors, employees, volunteers, and agents shall be additional insureds under all policies;
 - b. The policies are to be primary with respect to the interest of Buyer and its elected and appointed officials, directors, officers, managers, supervisors, employees, volunteers, and agents, and any other insurance maintained by any of them shall be excess and not contributory with Seller's insurance;

- c. Each insurer shall waive all rights of subrogation against Buyer and its elected and appointed officials, directors, officers, employees, and agents;
 - d. Governmental immunities endorsement;
 - e. Statement accepting the governing law and venue and jurisdiction terms of this Agreement; and
 - f. Notwithstanding any other provision of a policy, no policy shall be cancelled, expire or be changed in a material way by the insurer without thirty (30) days prior written notice to Buyer.
- 5.0 Seller or its insurers or agents shall, and shall cause PNE to, provide Buyer with certificates of insurance evidencing the policies and endorsements described prior to commencing any physical activities on the Site. Failure to obtain the insurance coverage required shall in no way relieve or limit Seller's obligations and liabilities under other provisions of this Agreement.
- 6.0 Buyer shall procure and maintain All-Risk insurance for the Site, Buyer Property, Buyer Improvements and all facilities, improvements and fixtures owned or operated by Buyer, which includes coverage for fire, flood, wind and storm, tornado and hurricane, and similar risks with respect to the Site, Buyer Improvements, or Buyer Improvements, in appropriate amounts, including full replacement value with respect to the Buyer Improvements.
- 7.0 The Additional Insured Endorsement and Governmental Immunities Endorsement shall be substantially in the following form:
- a. Additional Insured. Iowa Falls Community School District, including its appointed trustees, elected and appointed officials, officers, directors, managers, supervisors, employees, agents and volunteers are included as Additional Insureds, including ongoing operations coverage CG 2010 07 04 or equivalent, and completed operations CG 2037 07 04 or equivalent. This coverage shall be primary to the Additional Insureds, and not contributing with any insurance or similar protection available to the Additional Insureds, whether the other coverage be primary, contributing or excess.
 - b. Governmental Immunities.
 - (i) The insurer expressly agrees and states that the purchase of this policy and the inclusion of Iowa Falls Community School District as Additional Insured does not waive any of the defenses of governmental immunity available under Iowa Code Chapter 670 as it now exists and as it may be amended from time to time.
 - (ii) The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Iowa Code Chapter 670 as it now exists and as it may be amended from time to time.

- (iii) The Iowa Falls Community School District shall be responsible for asserting any defense of governmental immunity with respect to any claim, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Iowa Falls Community School District.
- (iv) The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the Iowa Falls Community School District, under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Iowa Falls Community School District.
- (v) The insurance carrier and the Iowa Falls Community School District agree that the above preservation of governmental immunity shall not otherwise change or alter the coverage available under the policy.

8.0 Buyer may be able to provide property damage and similar coverage for the Facility more cheaply and easily than Seller. The Parties will cooperate to determine whether such policies may best be provided by Buyer. In the event any of Seller's required coverages are provided by Buyer, Seller shall reimburse Buyer for the corresponding premiums.