

REGULAR MEETING OF RSU NO. 5 BOARD OF DIRECTORS
WEDNESDAY- MAY 13, 2020
6:30 P.M. REGULAR SESSION
REMOTE MEETING VIA ZOOM
AGENDA

Due to COVID-19 and the need for social distancing, the meeting **WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC.** As always, the meeting will be livestreamed on the RSU5 website under the top menu bar "Board and Policies" - Board Meeting Video (Youtube)
<https://www.youtube.com/channel/UC97VXXLhRFRjSPv1wfo1ACA/>

In addition, you will have the opportunity to join the meeting live online remotely and provide comments during public comment. The link to the live video conference will be posted on the home page of the RSU5 website under "District News" before the start of the meeting.

1. Call to Order:
The meeting was called to order at _____ p.m. by Chair Michelle Ritcheson
2. Attendance:

___ Kathryn Brown	___ Maura Pillsbury
___ Jeremy Clough	___ Michelle Ritcheson
___ Candace deCsipkes	___ Valeria Steverlynck
___ Lindsey Furtney	___ Madelyn Vertenten
___ Jennifer Galletta	___ Rhea Fitzpatrick – Student Representative
___ Susana Hancock	___ Liam Hornschild-Bear – Student Representative
___ Elisabeth Munsen	
3. Pledge of Allegiance:
4. Consideration of Minutes:
A. Consideration and approval of the Minutes of April 29, 2020 as presented barring any errors or omissions.

Motion: _____ 2nd: _____ Vote: _____
5. Adjustments to the Agenda:
6. Good News & Recognition:
A. Report from Board's Student Representative (10 Minutes)
7. Public Comments: (10 Minutes)
8. Reports from Superintendent:
NA
9. Administrator Reports:
A. RSU5 Solar Presentation - Agnieszka Dixon, Drummond Woodsum (40 Minutes)
B. Consideration and approval to enter into a Solar Power Purchase Agreement with ReVision Energy.

Motion: _____ 2nd: _____ Vote: _____

10. Board Comments and Committee Reports:
NA

11. Policy Review:
NA

12. Unfinished Business:
A. Discussion of Adopted FY21 Budget. (30 Minutes)
B. Consideration and approval to amend the FY21 Board Adopted Budget that was adopted at the April 1, 2020 Board meeting.

Motion: _____ 2nd: _____ Vote: _____

13. New Business:
A. Consideration and approval of the Comprehensive Education Plan. (5 Minutes)

Motion: _____ 2nd: _____ Vote: _____

14. Personnel: (10 Minutes)
A. Consideration and approval to accept the nomination of the following personnel and to authorize the Superintendent of Schools to issue contracts for the 2020-2021 school year.

1) Educators for 2nd Year Probationary Contracts:

Margaret Armstrong
Natalie Barrett
Stacey Bilodeau
Robert Borden
Darren Carter
Trevor Donoghue
Talya Edlund
Maureen Erskine
Kelly Howard
Haley Lynch
Katherine Lynch
Lydia MacDonald
Taylor Marshall
Hilary Massicotte
Julie McCabe
Samantha Medici
Nathaniel Menifield
Jillian Merrill
Stephen Moore
Jammie Murphy
Megan Murrow
Michelle Oliver
Kristopher Parkin
Kaley Petros
Benjamin Potvin
Erik Whitaker

2) Educators for 3rd Year Probationary Contracts:

Erin Abbott
Scott Arrit
Meredith Brown
Anna Brown
Heidi Cook
Kate Dawson
Kate Friesland
Elizabeth Grace
Jessica Harriman
Caitlyn Hecox
Nicole Hewes
Bethany Howard
Elizabeth Jacobson
Diane Kew
Abigail Leavitt
Jill Marsanskis
Georgiana McAllister
Elicia Niemiec
Jill Palmer
Elizabeth Rankin
Emily Robinson
Nancy Rochat
Christina Small
Kimarie Soule
Tracy Tremblay
Lexie Triggiani

3) Educators for Continuing Contracts:

Cathryn Bigley
Kate Cass
Sara Domingo
Emily Guyer
Michelle Hill
Bethany Jensen
Amanda Martin
Megan Nealey
Jacqueline Pawling
Jennifer Rosado
Natalie Safley
Shannon Sampson
Jennifer Winkler

Motion: _____ 2nd: _____ Vote: _____

15. Public Comments: (10 Minutes)

16. Executive Session:

- A. Consideration and approval to enter into Executive Session pursuant to 1 M.R.S.A § 405(6)(D) for the purpose of discussing Support Staff Negotiations for RSU No. 5.

Motion: _____ 2nd: _____ Vote: _____

Time In: _____ Time Out: _____

17. Action as a Result of Executive Session:

- A. Consideration and approval to ratify the Coastal Education Association for Educational Support Professional Unit Bargaining Agreement July 1, 2020 – June 30, 2023.

Motion: _____ 2nd: _____ Vote: _____

18. Executive Session:

- A. Consideration and approval to enter into Executive Session as outlined in 1 M.R.S.A § 405(6)(A) for the purpose of discussing the Superintendent's evaluation.

Motion: _____ 2nd: _____ Vote: _____

Time In _____ Time Out _____

19. Action as a Result of Executive Session:

20. Adjournment:

Motion: _____ 2nd: _____ Vote: _____ Time: _____

**RSU No. 5 Board of Directors Meeting
Wednesday, April 29, 2020 – 6:30 p.m.
Meeting Minutes
The Meeting Was Held Remotely Using Zoom**

(NOTE: These Minutes are not official until approved by the Board of Directors. Such action, either to approve or amend and approve, is anticipated at the May 13, 2020 meeting).

1. CALLED TO ORDER:

Chair Michelle Ritcheson called the meeting to order at 6:37 p.m.

2. MEMBERS PRESENT: Kathryn Brown, Jeremy Clough, Candy deCsipkes, Lindsey Furtney, Jennifer Galletta, Susana Hancock, Elisabeth Munsen, Maura Pillsbury, Michelle Ritcheson, Valeria Steverlynck, Madelyn Vertenten, Liam Hornschild-Bear, Student Representative

MEMBERS EXCUSED: None

Chair Ritcheson confirmed all members of the Board and public remotely attending the public proceedings were able to hear all members. Instructions on how to ask questions and the use of mute was explained.

3. PLEDGE OF ALLEGIANCE:

4. CONSIDERATION OF MINUTES:

A. VOTED: To approve the Minutes of March 25, 2020 and April 1, 2020.

(Steverlynck - Hancock) (11 – 0) The student representative voted with the majority.

5. ADJUSTMENTS TO THE AGENDA:

Move 12.B. prior to 11 (Policy)

6. GOOD NEWS AND RECOGNITION:

A. Report from Board's Student Representative – Liam Hornschild-Bear, Student Representative

7. PUBLIC COMMENT:

None

8. REPORTS FROM SUPERINTENDENT:

A. Items for Information

- District Happenings
- Resignations (effective at the end of the school year)
 - Faith Farrington - DCS Special Education Teacher
 - Stephanie Weeks - FMS Health Teacher
 - Amy Chaput - MSS Kindergarten Teacher
 - Martha Pulsifer - PES First Grade Teacher

9. ADMINISTRATOR REPORTS:

A. Finance - Scott Vaitones

10. BOARD COMMENTS AND COMMITTEE REPORTS:

A. Board Information Exchange and Agenda Requests

Maura Pillsbury - Région Ten approved their FY21 Budget

B. Finance Committee

- C. Strategic Communications - Migration of Students
- D. Policy Committee

12. UNFINISHED BUSINESS: (This item was taken out of order)
B. Discussion of adopted Budget

11. POLICY REVIEW:

- A. VOTED:** To approve the 1st Read of the following Policy. (Munsen – Steverlynck) (11 – 0)
The student representative voted with the majority.
BHC - Board of Directors Communications with Staff

- B. VOTED:** To approve the 2nd Read of the following Policies. (Hancock – Munsen) (11 – 0)
The student representative voted with the majority.
JICK - Bullying
JICK-R-Bullying Administrative Procedure
JJIB - Sponsorship and Evaluation of Athletic Programs

12. UNFINISHED BUSINESS:

- A. Budget Timeline Update
- Vote/sign Annual Budget Meeting & Budget Validation Referendum Warrants - May 27, 2020
 - Annual Budget Meeting - New date of June 17, 2020
 - Budget Validation Referendum - New date of July 14, 2020
 - Additional Board meeting to vote/sign Computation and Declaration of Votes - July 15, 2020

- C. Update on Remote Learning

13. NEW BUSINESS:

- A. VOTED:** That pursuant to section 1485(4) of Title 20-A, the Finance Committee be authorized to transfer not more than 5% of the total appropriation for any cost center in the FY21 operating budget to another cost center or among other cost centers, provided that the total FY21 fiscal year operating budget shall not be increased by such transfers. (Steverlynck – Vertenten) (11 – 0) The student representative voted with the majority.

14. PERSONNEL:

None

15. PUBLIC COMMENT:

Ralph Dean, Freeport

16. EXECUTIVE SESSION:

- A. VOTED:** To enter into Executive Session pursuant to 1 M.R.S.A § 405(6)(D) for the purpose of discussing Support Staff Negotiations for RSU No. 5. (Vertenten – Hancock) (11 – 0)

Time In: 9:05 p.m.


Time Out: 9:49 p.m.

17. ACTION AS A RESULT OF EXECUTIVE SESSION:

This item was Tabled.

18. ADJOURNMENT:

VOTED: To adjourn at 9:50 p.m. (Galletta – Brown) (11 – 0)


Becky J. Foley, Superintendent of Schools

Solar Power Purchase Agreement

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

Purchaser:	Regional School Unit No. 5 , a Maine school administrative unit acting by and through its governing body	Seller:	Camden Solar LLC , a Maine limited liability company
Name and Address	Regional School Unit No. 5 Attention: Dennis Ouellette 17 West Street Freeport, ME 04032	Name and Address	Camden Solar LLC c/o Aligned Climate Capital 2 LLC 41 Madison Avenue, 31 st Floor New York, NY 10010
Phone	(207) 865-0928 x226	Phone	(202) 669-5977
E-mail	ouelletted@rsu5.org	E-mail	brendan@alignedclimatecapital.com

WHEREAS, Seller is in the business of financing, developing, owning, operating, and maintaining solar photovoltaic electric generation facilities;

WHEREAS, Seller is the lessee of the property located at 58 Souther Road, Livermore Fall, ME 04254 (the "Premises"), and has the right to develop renewable energy generation facilities at the Premises, as defined hereunder;

WHEREAS, Seller plans to finance, install, construct, own, operate, and maintain a solar photovoltaic electric generation facility at the Premises;

WHEREAS, the Purchaser together with other Maine school administrative units, municipalities, special districts, and other entities that intend to execute an agreement to purchase electric energy from the System described below under similar terms and conditions (all together as the "Purchasing Entities") intend to collectively purchase electric energy generated from such solar photovoltaic electric generation facility, subject to the terms and conditions, as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions of the purchase and sale of solar generated electric energy from the solar photovoltaic electric generation facility described in Exhibit 2 (the "System") for Purchaser, interconnected to the utility grid as described in Exhibit 2.

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

<u>Exhibit 1</u>	Basic Terms and Conditions
<u>Exhibit 2</u>	System Description
<u>Exhibit 3</u>	Credit Information – omitted by agreement of the Parties
<u>Exhibit 4</u>	General Terms and Conditions

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be signed on their behalf by their duly authorized representatives who, by their signatures below, attest that they have the power and authority to bind their respective Party.

Purchaser:

Regional School Unit No. 5

By (signature): _____

Printed Name: _____

Title: _____

Date: _____

Seller:

Camden Solar LLC

By (signature): _____

Printed Name: _____

Title: _____

Date: _____

Exhibit 1
Basic Terms and Conditions

1. **Initial Term: Twenty (20) years**, beginning on the Commercial Operation Date.
2. **Additional Terms: First Additional Term** of five years, and up to **two (2) Additional Terms** of **five (5) years** each.
3. **Environmental Incentives and Environment Attributes:** Accrue to Seller unless Purchaser elects to purchase Renewable Energy Credits ("RECS") generated by the System from Seller at the combined Energy and REC rate below.
4. **Contract Energy Price per Kilowatt Hour (\$/kWh):** Purchaser elects the ☐ Energy Only Rate ☒ Energy and REC Combined Rate.

Contract Year	Estimated Total Energy Production (kWh) – Souther Farm (Complete Site)	Estimated Purchaser Percentage (kWh) – Souther Farm (Complete Site)	Energy Only Rate \$/kWh	Energy and REC Combined Rate \$/kWh
1	6,692,930	2,168,803	\$0.0900	\$0.0950
2	6,659,465	2,157,959	\$0.0900	\$0.0950
3	6,626,168	2,147,170	\$0.0914	\$0.0964
4	6,593,037	2,136,434	\$0.0927	\$0.0979
5	6,560,072	2,125,752	\$0.0941	\$0.0993
6	6,527,272	2,115,123	\$0.0955	\$0.1008
7	6,494,635	2,104,547	\$0.0970	\$0.1023
8	6,462,162	2,094,024	\$0.0984	\$0.1039
9	6,429,851	2,083,554	\$0.0999	\$0.1054
10	6,397,702	2,073,137	\$0.1014	\$0.1070
11	6,365,714	2,062,771	\$0.1029	\$0.1086
12	6,333,885	2,052,457	\$0.1044	\$0.1103
13	6,302,216	2,042,195	\$0.1060	\$0.1119
14	6,270,704	2,031,984	\$0.1076	\$0.1136
15	6,239,351	2,021,824	\$0.1092	\$0.1153
16	6,208,154	2,011,715	\$0.1109	\$0.1170
17	6,177,113	2,001,656	\$0.1125	\$0.1188
18	6,146,228	1,991,648	\$0.1142	\$0.1206
19	6,115,497	1,981,690	\$0.1159	\$0.1224
20	6,084,919	1,971,781	\$0.1177	\$0.1242
21	6,054,495	1,961,922	\$0.1194	\$0.1261
22	6,024,222	1,952,113	\$0.1212	\$0.1280
23	5,994,101	1,942,352	\$0.1230	\$0.1299
24	5,964,131	1,932,640	\$0.1249	\$0.1318
25	5,934,310	1,922,977	\$0.1268	\$0.1338
26	5,904,638	1,913,362	\$0.1287	\$0.1358
27	5,875,115	1,903,795	\$0.1306	\$0.1378
28	5,845,740	1,894,276	\$0.1325	\$0.1399
29	5,816,511	1,884,805	\$0.1345	\$0.1420
30	5,787,428	1,875,381	\$0.1365	\$0.1441
31	5,758,491	1,866,004	\$0.1386	\$0.1463
32	5,729,699	1,856,674	\$0.1407	\$0.1485
33	5,701,050	1,847,391	\$0.1428	\$0.1507
34	5,672,545	1,838,154	\$0.1449	\$0.1530
35	5,644,182	1,828,963	\$0.1471	\$0.1553

5. **Condition Satisfaction Date: June 30, 2020**
6. **Anticipated Commercial Operation Date: December 31, 2020**

7. **Purchaser Options to Purchase System.** ☐ None, or ☒ As set forth in Section 16.b.
8. **Outside Commercial Operation Date: December 31, 2021.** In the event of any delay outside the reasonable control of the Seller and provided that the Seller is continuing to diligently pursue the permitting, construction, interconnection, and installation, the Outside Commercial Operation Date shall be equitably extended to a date mutually agreed to by the Parties, taking into account the facts, circumstances and length of such delay.

End of Exhibit 1

Exhibit 2
System Description – Souther Farm (Complete Site)

1. **System Location:** 58 Souther Road, Livermore Fall, ME 04254
2. **System Size – Souther Farm (Complete Site):** 5,124 DC kW (panel nameplate capacity), 3,900 AC kW (inverter rating).
3. **Expected First Year Energy Production (kWh) – Souther Farm (Complete Site):** 6,692,930 (plus or minus ten (10) percent annually, depending upon weather). Expected energy production shall be de-rated by one half of one percent (0.5%) annually.
4. **Expected Structure:** ☒ Ground Mount ☐ Roof Mount ☐ Parking Structure ☐ Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
SMA Sunny Highpower Peak 3 150 kW, or equivalent, with manufacturer's 5-year warranty	26

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
REC TwinPeak 2S 355 W, or equivalent, with manufacturer's 25-year warranty	7,020
REC TwinPeak 2S 375 W, or equivalent, with manufacturer's 25-year warranty	7,020

7. **Preliminary System Layout:** See Exhibit 2, Attachment A. Seller may, at its sole discretion, modify the System design as Seller deems necessary for purposes of permitting, procurement, construction and project implementation.
8. **Utility:** Central Maine Power
9. **Participating Meters:**
 - i. To be provided by Purchaser as part of the Net Energy Billing application pursuant to Exhibit 4 Section 7.d.
10. **Purchaser Percentage:** The Purchaser Percentage shall be Thirty-Two and 40/100s (32.40) percent of annual electric energy generated by the System (Souther Farm (Complete Site)) (the "Purchaser Percentage"), provided that the initial Purchaser Percentage of Total Estimated Production in Exhibit 1 shall not exceed 2,168,803 kWh/year ("Purchaser's Not to Exceed Estimated Amount). Seller may alter the location, design or capacity of the System as Seller deems necessary for permitting, procurement, construction or other purposes, so long as Seller provides written Notice to Buyer prior to the Commercial Operations Date and the initial Purchaser Percentage is less than Purchaser's Not to Exceed Estimated Amount.

Exhibit 2
Attachment A:

Aerial Image of Premises	See Site Map, below.
Conceptual Drawing of the System	See One Line Drawing, below.
Location of System Components	Solar array to be located on the Grounds of 58 Souther Road, Livermore Falls, ME as portrayed in site map. Inverters to be located inside perimeter fence.
Delivery Point	On utility side of private meter/data logger as shown in One Line Drawing, below.

Preliminary Site Map:



End of Exhibit 2

Exhibit 3
Credit Information

Omitted by agreement of the Parties.

End of Exhibit 3

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, the Purchaser Percentage, as set forth in Exhibit 2, Section 10, of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "Term"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on Exhibit 2 (the "Delivery Point"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point, in proportion with the Purchaser Percentage. Purchaser may purchase electric energy from other sources if the Purchaser's electric requirements exceed Purchaser's share of the output of the System, provided that in all cases Purchaser first and foremost purchases its electrical energy from the System as contemplated herein. To the extent Purchaser's credits or payments from the Utility are anticipated to exceed ninety-five percent (95%) of the aggregate cost of Purchaser's electric requirements over a twelve (12) month period, and subject to Section 9(b) of this Agreement, the Parties shall negotiate in good faith to recruit one or more Purchasing Entities or a credit-worthy, not-for-profit, school administrative unit, municipal, or quasi-municipal third party entity to purchase a portion of the Purchaser Percentage under the terms and conditions herein. Until such Purchasing Entity(ies) or third party(ies) agrees to assume responsibility for a portion of the Purchaser Percentage or if adding an additional Purchasing Entity would be prohibited by applicable law, Purchaser shall remain obligated to purchase its full Purchaser Percentage. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.
3. **Purchase and Sale of Renewable Energy Credits.** If Purchaser elects the Energy and Renewable Energy Credit (REC) combined purchase option provided in Exhibit 1, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, Purchaser's Percentage of the RECs generated by the System for the Contract Year and at the price per kilowatt-hour specified for that year shown in Exhibit 1.
4. **Term and Termination.**
 - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser (the "Utility"), as set forth on Exhibit 2. If the actual Commercial Operation Date falls or is estimated to fall after the Outside Commercial Operation Date specified in Section 8 of Exhibit 1, as may have been equitably extended pursuant to said Section 8, Purchaser may terminate this Agreement by providing thirty (30) days prior written notice to the Seller, without liability for costs or damages or triggering a default under this Agreement, and the termination date in such case shall be the date of said written notice. This Agreement is effective as of the Effective Date and Purchaser's intentional failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing its obligations hereunder shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
 - b. **Additional Terms.** Prior to the end of the Initial Term, if Purchasing Entities have not exercised their option to purchase the System pursuant to Section 16.b herein, Seller may, at its sole option, give the Purchaser written notice of its desire to extend this Agreement on the terms and conditions set forth herein for a First Additional Term, as defined in Exhibit 1. Notice of intent to continue for a First Additional Term shall be given by Seller to Purchaser, if at all, not less than ninety (90) days before the last day of the Initial Term and shall be effective upon Purchaser's receipt of notice. Prior to the end of the Initial Term and any other applicable Additional Term, the Parties may, by

written amendment to this Agreement, extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each such additional period, an "Additional Term"). Such written amendment shall be executed, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the First Additional Term or the then current Additional Term, as applicable.

5. Billing and Payment.

a. Monthly Charges.

- i. **Energy Only Charges.** If Purchaser elects the Energy Only rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this Section 5) for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The periodic payment for such energy will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy generated during each month of the applicable billing period, as measured by the System meter.
 - ii. **Combined Energy and REC Charges.** If Purchaser elects the Energy and REC Combined rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this Section 5) for the electric energy and RECs generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The periodic payment for such energy will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy and RECs generated during each month of the applicable billing period, as measured by the System meter.
- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly in arrears, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the energy and REC rates applicable to each Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
- c. **Seller's Option for Quarterly Invoicing.** Seller, at Seller's sole option, may elect to invoice Purchaser on a quarterly basis. If Seller exercises the option to invoice quarterly for one or more billing periods, it shall not prohibit Seller from invoicing Monthly thereafter. Seller shall provide Purchaser with at least ninety (90) days prior written notice before changing the frequency of invoicing.
- d. **Taxes.** Purchaser shall either pay or reimburse Seller for the Purchaser Percentage of any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser's acts or omissions. For purposes of this Section 5.d, "Taxes" means any federal, state and local generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include (i) any property taxes or similar taxes on the System or Premises or (ii) any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- e. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

6. Environmental Attributes and Environmental Incentives.

- a. Unless otherwise specified in Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller.

- b. **Press Releases.** To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy generated by the System and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Except for Contract Years in which Purchaser purchases RECs under the purchase option in Exhibit 1, Purchaser hereby acknowledges and consents to Seller's exclusive right to (i) make any claim that electric energy provided to Purchaser under this Agreement was generated by the System, (ii) all claims that Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) all rights, title to and ownership of any and all RECs, credits, certificates, and registrations evidencing or representing any of the foregoing attributes and to take any action necessary for Seller to claim, register, sell or otherwise dispose of such interests.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 6. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"Environmental Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority; provided, however, that "Environmental Incentives" does not mean any electric bill or utility credits related to net metering or net energy billing.

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

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

7. **Conditions to Obligations.**

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

- i. Approval of (A) this Agreement and (B) the Site Lease, and (C) the Construction Agreement (if any) for the System by Seller and Seller's Financing Parties (if any). "Construction Agreement" as used in this subsection means an agreement between Seller and any contractor or subcontractor to install all or part of the System;
- ii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits and/or, in the event the Purchaser elects to purchase RECs, that Seller will be able to transfer, assign and sell to Purchaser such RECs;
- iii. Confirmation that the Premises is suitable for the development, installation, construction, interconnection, ownership and operation of the System;

- iv. Receipt of all necessary zoning, land use and building permits, licenses, and approvals; and
 - v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system, and for Net Energy Billing of the electricity generated by the System together with Purchaser's utility accounts.
- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate for the satisfaction of the failed conditions. If the Parties are unable to reach agreement then Seller may terminate this Agreement upon ten (10) days written notice to Purchaser without liability for costs or damages or triggering a default under this Agreement.
- c. **[Intentionally Omitted].**
- d. **Conditions to Purchaser's Obligations.** Purchaser's obligations under Section 5.a are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date specified in Section 8 of Exhibit 1, and execution of all necessary agreements with the Utility for Net Energy Billing, as defined in Section 9.b, of the electricity generated by the System among Purchaser's Utility meters and/or accounts. Purchaser agrees to promptly execute all necessary agreements with the Utility for Net Energy Billing upon presentation of such agreements to Purchaser.

8. **Seller's Rights and Obligations.**

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use, construction, electrical and building permits, licenses and approvals required to construct, install and operate the System;
 - ii. any agreements and approvals from the Utility and/or Public Utilities Commission necessary in order to interconnect the System to the Utility's electric distribution system and/or net meter energy produced by the System among Purchaser's Utility meters and/or accounts.
- Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals. Where required, Purchaser shall obtain all such agreements, permits and approvals in Purchaser's name to enable and benefit operation of the System; however, Seller shall pay or reimburse Purchaser for all fees required.
- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Premises. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, and shall ensure that the System, including applicable environmental controls, are properly operated and maintained. Seller shall ensure that vegetation at the Premises is trimmed (including between and around rows of the System) during the Term so as to maximize solar photovoltaic electric generation at the Premises. Seller shall perform all repairs within standard industry time periods.
- c. **Breakdown Notice.** Seller shall notify Purchaser within five (5) business days following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Seller shall undertake any required emergency action or repairs as soon as possible.
- d. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, however, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser. Seller shall provide Purchaser with notice of any such suspension in accord with subsection (c).
- e. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement; provided, however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for its obligations under this Agreement and for the quality of the work performed by its contractors and subcontractors.

- f. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise; provided, however, that this subparagraph shall not prevent transfer of any applicable warranties to Purchasing Entities pursuant to Section 16.

9. **Purchaser's Rights and Obligations.**

- a. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a., Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- b. **Net Energy Billing.** Purchaser shall promptly take action and execute any documents required to establish net energy billing with the Utility pursuant to 35-A M.R.S. §§ 3209-A or 3209-B and Chapter 313 of the Rules and Regulations of the Maine Public Utilities Commission, as may be amended from time to time ("Net Energy Billing"). Purchaser shall receive the value of any credits or payments from the Utility that may be available under Net Energy Billing or similar program for the Purchaser Percentage of electric energy generated by the System. It is the intent of the Parties that Purchaser's purchase of electric energy under this Agreement will enable it to receive credits or payments from the Utility through Net Energy Billing.
- c. **Net Energy Billing After Twenty Years.**
- i. **Eligibility.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, either the Purchaser or the System is not eligible to participate in Net Energy Billing, then Purchaser shall have the right to terminate this Agreement in its sole discretion without further liability to either Party except with respect to payment of amounts accrued prior to termination. Such termination shall be effective thirty (30) days after receipt by Seller of written notice of termination from Purchaser.
- ii. **Value of Net Energy Billing Credits.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, the Purchaser and System are eligible to participate in Net Energy Billing but the rate used to calculate the value of Purchaser's credits under Net Energy Billing is reduced by at least twenty percent (20%) compared to the average rate used during the twentieth (20th) Contract Year, then the Parties shall, within thirty (30) days following receipt by Seller from Purchaser of notice of such material change, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Purchaser shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.
- d. **Educational Opportunities.** Seller shall provide Purchaser with real time access to the System remote metering and data logging for use in Purchaser's curriculum. Seller and Purchaser agree to negotiate in good faith to provide Purchaser with opportunities for classroom instruction and field tours of the System under terms and conditions satisfactory to each Party, including the requirement that Purchaser maintain adequate insurance for such classroom instruction and field tours.

10. **Change in Law.**

"Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, including without limitation Net Energy Billing; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (i), (ii) or (iii), establishes requirements affecting (x) owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations or (y) the Purchaser's or the System's

eligibility to participate in Net Energy Billing; provided, however, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement or on the Purchaser's or the System's eligibility to participate in Net Energy Billing, then the Parties shall, within thirty (30) days following receipt by either Party from the other Party of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

11. **[Intentionally Omitted].**

12. **Measurement.** Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet revenue grade standards as set by the American National Standards Institute, C12.20 or similar class applicable to the electric utility industry. Seller shall maintain the meter(s) in accordance with industry standards. Seller may provide a remote accessible data logging and reporting system during the Term to enable Seller to remotely record the amount of electric energy generated by the System and Purchaser shall also be given access to the data. During such time the monitoring and/or reporting system ceases to function, but not longer than ninety (90) days, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 5. Within sixty (60) days of invoicing estimated charges, the estimated production shall be compared to actual production based on a physical reading of the on-site meter and Seller shall issue an invoice or credit, as the case may be, to correct overages or underages that occurred during the period invoices were based on estimated production.

13. **Default, Remedies and Damages.**

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "Defaulting Party", the other Party shall be deemed to be the "Non-Defaulting Party", and each event of default shall be a "Default Event," provided, however, that a Nonappropriation Event pursuant to Section 22 shall not be a Default Event:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute within ninety (90) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("Payment Default");
- ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, however, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization (but not a school reorganization as provided under Title 20-A of the Maine Revised Statutes, as may be amended from time to time), insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- v. Purchaser prevents Seller from installing the System or obtaining required approvals, or in any way prevents or obstructs Seller from delivering electric energy from the System to the Delivery Point or to the grid, or prevents Seller from receiving or selling Environmental Benefits, including without limitation RECs. Such

Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

- i. **Remedies for Default.** On the occurrence of a Default Event, the Non-Defaulting Party may, after notice of default and failure to cure set forth above, (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages; provided, however, that the Non-Defaulting Party shall first utilize commercially reasonable efforts to mitigate its damages pursuant to Section 13.b.iii. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- ii. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):
 - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to be paid to Seller shall be an amount equal to the product of the Purchaser Percentage and the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty-five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty-five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Initial Term post-termination, had the Initial Term remained effective for the full Initial Term, and (3) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Initial Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.
 - B. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; and (2) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser.
- iii. **Obligations Following Termination.** The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations, Warranties and Covenants.

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

- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. **Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

- i. **Authority to Execute.** Purchaser has the full right, power, and authority to enter into this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.

15. **System Damage and Insurance.**

a. **System Damage.**

- i. **Seller's Obligations.** If the System is damaged or destroyed, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees to pay for the cost of such restoration of the System.

b. **Insurance Coverage.** At all times during the Term, Seller shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
- ii. **Reserved.**

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

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

16. **Ownership; Option to Purchase.**

a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives,

and Tax Credits, and the System shall remain the personal property of Seller. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

- b. **Option to Purchaser.** Provided Purchaser is not in default under this Agreement, Purchaser shall either (i) simultaneously with the other parties subscribing for a share of the System (the "Other Purchasing Entities") or (ii) on its own if the Other Purchasing Entities consent to Purchaser's purchase of the System and Purchaser assumes all of Seller's obligations under the Other Purchasing Entity's power purchase agreement or similar agreement, have the option to purchase the System from Seller at a price that is the product of (a) the Purchaser Percentage (if the Other Purchasing Entity is exercising the purchase option) or one hundred (100) percent (if Purchaser is the only entity exercising its option to purchase), and (b) the greater of (1) the amount necessary to (i) prepay the debt or any Provider financing obtained to finance the Project which includes any and all prepayment premiums or penalties, "make-whole" payments, and all other reasonable fees, charges, costs and expenses Seller incurs in connection with such repayment or prepayment, and (ii) pay the tax liability of the constituent members of the Seller (and/or the actual taxpayer liable for such tax liability) arising from the sale, using the following assumptions: (A) all such taxpayers have an aggregate (federal, state and local) marginal tax rate of thirty five percent (35%), (B) the Seller has elected one hundred percent (100%) bonus depreciation in respect of the System, and (C) all such taxpayers have been able to fully deduct against other taxable income, at such assumed thirty five percent (35%) marginal tax rate, the full amount of all losses allocated to them in respect of the System; and (2) the Fair Market Value of the System. If Purchaser exercises its option to purchase the System, and Purchaser is the only entity purchasing the System, then Seller shall transfer or assign to Purchaser all of Seller's real property interests in the Premises necessary for Purchaser to own, operate, maintain, repair and remove the System and deliver energy from the System to the Delivery Point; provided, however, if the Purchaser and the Other Purchasing Entity desire to jointly exercise their options to purchase the System, Purchaser agrees to coordinate with the Other Purchasing Entity and negotiate in good faith with such entity the joint assumption of the Seller's real property interests in the Premises necessary for Purchaser and the Other Purchasing Entity to own, operate, maintain, repair and remove the System and deliver energy from the System to the Delivery Point. This option to purchase the System may be exercised on each of the 5th, 9th, 14th, and 17th anniversary of the Commercial Operation Date (Contract Years 6, 10, 15, and 18), as well as the expiration of the Initial Term and the expiration of each Additional Term. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.
- c. **Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the existence of this Agreement, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation. Upon request by Purchasing Entities, Seller shall provide Purchasing Entities with the estimated Fair Market Value eighteen (18) months prior to each option to purchase under Section 16.b, provided that such estimate shall not be binding on Seller. Seller shall determine the final Fair Market Value within thirty (30) days after Purchasing Entities have exercised their option to Purchase the System. Seller shall give written notice to Purchasing Entities of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchasing Entities reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchasing Entities will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability.**

- a. **General.** To the greatest extent permitted by applicable law, Seller (the “Indemnifying Party”) shall defend, indemnify and hold harmless Purchaser and its officers, officials, agents and employees (collectively, the “Indemnified Party”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “Liabilities”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17.a however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17.c.
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “Claim”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17.c.i) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents.
 - i. **“Hazardous Substance”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**
 - i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (i) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a direct result of a Default Event by Purchaser, such recaptured amount as is attributable to the Default Event shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that a Default Event causes a Party to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales as is attributable to the Default Event shall be direct and not indirect or consequential damages.
 - ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 17 and damages that result from the grossly negligent or willful misconduct of Seller, Seller’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this

Agreement shall not exceed the sum of Purchaser's actual and projected payments during the Initial Term under this Agreement. The provisions of this Section 17.d.ii shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. Force Majeure.

- a. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, however, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- c. If a Force Majeure event continues for a period of one hundred twenty (120) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event or thereafter, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to its Designated Investment Partner or any Financing Party or any affiliate thereof, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of all of Seller's obligations hereunder by the assignee). In the event of any such assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement shall transfer all of Seller's rights and obligations under this Agreement to the assignee, and shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has substantially comparable technical experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services substantially comparable to those contemplated by this Agreement, (y) has the financial capability to operate and maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement, and (z) agrees to provide Purchaser with real time access to the System for educational opportunities in Purchaser's curriculum in accordance with Section 9.d. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees; provided, however, that if Purchaser is dissolved or is no longer in existence for any reason, Purchaser shall be deemed to have no successor and this Agreement shall automatically terminate.

- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19.a(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Designated Investment Partner.** Seller's "Designated Investment Partner" is Aligned Climate Capital __ LLC, and shall include any investment fund managed by Aligned Climate Capital LLC.
- d. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "Successor Provider"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other, clearly designates such information as confidential upon transmittal to the receiving Party, and provides to the receiving Party a legal basis on which such designation is made, the receiving Party shall (a) protect, to the extent allowed by law, including without limitation the Maine Freedom of Access Act, Title 1 M.R.S. Chapter 13, the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its officials, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions to the extent allowed by law. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party, subject to applicable law including without limitation Maine's records retention laws and rules.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (v) in the case of Purchaser, is required to be disclosed pursuant to applicable law, including without limitation the Maine Freedom of Access Act (1 M.R.S.A. §§ 400 et seq.). If disclosure of information is required pursuant to this Section 20.b, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe this Agreement. Neither Party shall make any press release or public announcement of the specific

terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Nonappropriation of Funds.** The payment obligations of Purchaser under this Agreement shall constitute a current expense of Purchaser. Any non-substitution, notification, time limitation, or other provision in this Agreement restricting or limiting Purchaser's right to terminate the Agreement upon a Nonappropriation Event shall be enforceable only to the extent that such restriction or limitation is permitted by applicable law and would not cause Purchaser's obligation to make payments under the Agreement to be deemed or construed as a debt of Purchaser in contravention of any constitutional, statutory or other legal requirement governing the creation of indebtedness by Purchaser. Nothing in this Agreement shall be deemed a pledge of general tax revenues, funds or monies of Purchaser. Notwithstanding anything contained in this Agreement to the contrary, if a Nonappropriation Event occurs, this Agreement shall automatically terminate on the last day of the fiscal period for which appropriations were received, without penalty or expense to Purchaser of any kind whatsoever, except as to the payments or portions thereof for which funds have been appropriated and budgeted. Seller may, immediately upon becoming aware of a Nonappropriation Event or upon Purchaser's failure to make a payment under this Agreement as a result of a Nonappropriation Event, re-subscribe, sell, transfer, assign and convey to any third party the electrical energy comprising the Purchaser's Percentage and any and all Net Energy Billing credits and Environmental Attributes associated therewith without penalty or expense to Seller so long as any such re-subscription, sale, transfer, assignment, or conveyance has an effective date as of the automatic termination date, and Purchaser hereby agrees to reasonably cooperate with Seller to effectuate and evidence the termination of this Agreement, the interconnection agreement with the Utility, and any other contract or agreement contemplated herein. All obligations of Purchaser and Seller accruing prior to such automatic termination date will survive any such termination. "Nonappropriation Event" means the failure of the "legislative body" (as such term is used in 20-A M.R.S. §§ 1481-A, *et seq.*, as well as any successor provision) of the Purchaser to appropriate funds for the payment Purchaser's obligations under this Agreement.

a. **Purchaser's Additional Covenant.** Purchaser hereby covenants that the Purchaser will do all things lawfully within its power to obtain and maintain funds from which the Purchaser's payment obligations under this Agreement may be made, including making provision for such payment obligations in each proposed annual budget of the Purchaser submitted for approval in accordance with applicable law and procedures, including without limitation 20-A M.R.S.A. § 1481-A, *et seq.*, as may be amended from time to time.

23. **Miscellaneous Provisions**

a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.

b. **Arbitration and Attorneys' Fees.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party. If, after such negotiation, the Dispute remains unresolved, and if the Parties mutually agree, Disputes arising in connection with or under this Agreement, may be finally resolved by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules/Fast Track Procedures. Unless otherwise agreed in writing by the Parties, any Dispute proceeding shall be held in Cumberland County, Maine. If binding arbitration is approved by both Parties in writing, any such decision rendered by the arbitrator shall be final, binding, and non-appealable. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.

d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 14 (Representations and Warranties), Section 8.f (No Warranty), Section 15.b (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22 (Nonappropriation

of Funds), Section 23.g (Choice of Law), Section 23.b (Arbitration and Attorneys' Fees), Section 23.c (Notices), Section 23.g (Comparative Negligence), Section 23.h (Non-Dedication of Facilities), Section 23.m (Service Contract), Section 23.n (No Partnership) Section 23.o (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 23.q (No Third Party Beneficiaries).

- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however, that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **[Reserved].**
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 12 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Capacity & Ancillary Services.** Seller shall be entitled to receive any payments for electric capacity (including savings in the form of reduced demand charges) or ancillary services that may become available as a result of the construction or operation of the System. Purchaser shall provide reasonable assistance to Seller in order for Seller to receive such payments, and if Purchaser is deemed to be the owner or provider of such capacity or services, Purchaser shall assign the same to Seller, provided that Seller shall be responsible for the preparation and submission of any necessary applications or other documents. If Purchaser receives any payments in respect of capacity or such services it shall promptly pay them over to Seller.

- k. **No Resale of Electricity.** Except as contemplated by the provisions of this Agreement, the electricity purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller, which approval shall not be unreasonably withheld, and Purchaser shall not take any action which would cause Purchaser or Seller to become a utility or public service company.
- l. **Seller Is Not A Utility.** Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Seller's obligations or performance under this Agreement.
- m. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- n. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- o. **Full Agreement. Modification. Invalidity. E-Signature. Counterparts. Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be electronically signed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. Electronic signatures shall be the same as handwritten signatures for the purposes of validity, enforceability and admissibility. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- p. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- q. **No Third Party Beneficiaries.** Except for assignees, and Financing Parties permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Exhibit 4

Memorandum

To: RSU5 Board of Directors and Superintendent Dr. Becky Foley
From: Cynthia Alexander, Asst. Superintendent
Date: May 1, 2020 Re: *Comprehensive Education Plan*

The Board is required to have in place a Comprehensive Education Plan (CEP). This plan contains copies of all state required policies, procedures, forms and other documents.

Annually, the Comprehensive Education Plan is updated as policies and procedures may change due to new regulations. Each year we ask the Board to affirm our updated Comprehensive Education Plan with a vote from its members.

The Comprehensive Education Plan is available for review by the Board or other members of our school community and is located at the Superintendent's office.

Here are the 2019-2020 updates to the CEP:

- Personnel Plan - Updated RSU 5 Educator Professional Growth and Evaluation Handbook. Will add once it has gone to the Board.
- Local Assessment System - will add updated policy IKF Graduation Requirements after second read.
- Education of the Gifted and Talented - added FY20 application
- Plan for Use of ESSA Funds - Added the approved ESSA funds application.

Cynthia Alexander,
Assistant Superintendent