

## Solar Carport Lease Agreement

This Solar Carport Lease Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Lessor below (the “**Effective Date**”).

<b>Lessee:</b>		<b>Lessor:</b>	
<b>Name and Address</b>	Texarkana Regional Airport 2600 TXK Blvd Texarkana, AR. 71854 Attention: Airport Director	<b>Name and Address</b>	City of Texarkana Arkansas 216 Walnut Street Texarkana, AR 71854 Attention: City Manager
<b>Phone</b>	(870) 774-2171	<b>Phone</b>	(870) 779-4991
<b>E-mail</b>	Director@TXKAirport.com	<b>E-mail</b>	Director@TXKAirport.com
<b>Premises Ownership</b>	Lessee owns the Premises.	<b>Additional Lessor Information</b>	

This Agreement sets forth the terms and conditions of the Lessee and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Lessee’s facility described in **Exhibit 2** (the “**Facility**”).

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

- Exhibit 1**      Basic Terms and Conditions
- Exhibit 2**      System Description
- Exhibit 3**      Assignment of Contracts and Assets
- Exhibit 4**      General Terms and Conditions

**Lessee:** Texarkana Regional Airport

**Lessor:** City of Texarkana Arkansas

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Exhibit 1**  
**Basic Terms and Conditions**

1. **Term:** 15 Years, beginning on the Commercial Operation Date.
2. **Additional Terms:** N/A
3. **Tax Incentives and Environment Attributes:** Accrue to Lessee
4. **Contract Price:**

Contract Year	Cost (\$)
1	\$101,308
2	\$101,308
3	\$101,308
4	\$101,308
5	\$101,308
6	\$101,308
7	\$101,308
8	\$101,308
9	\$101,308
10	\$101,308
11	\$101,308
12	\$101,308
13	\$101,308
14	\$101,308
15	\$101,308
16	\$ 1
17	
18	
19	
20	

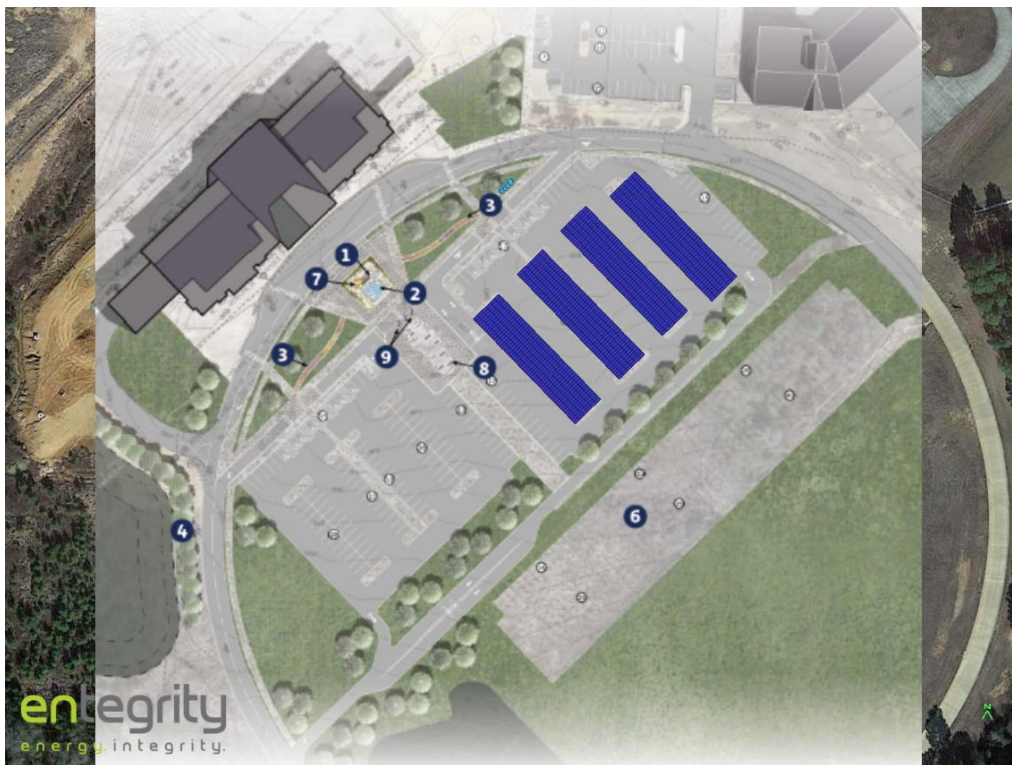
5. **Anticipated Commercial Operation Date:** September 2024
6. **Lessee Options to Purchase System.** As set forth in Section 19(b).

**Exhibit 2**  
**System Description**

1. **System Location:** 600 TXK Blvd, Texarkana, AR 71854
2. **System Size (DC kW):** 528
3. **Expected First Year Energy Production (kWh):** 722,077
4. **Structure:** Parking/Carport
5. **Facility and System Layout:** See **Exhibit 2, Attachment A**
6. **Utility:** SWEPCO

**Exhibit 2**  
**Attachment A:**  
Facility and System Layout

An Aerial Photograph of the Facility	See below.
Conceptual Drawing of the System	See below
Delivery Point	Array electrical production delivered into the SWEPCO grid via SWEPCO owned transformer. KWh credits from this delivered energy will be applied to TXK SWEPCO bills via meter aggregation.
Access Points	Array access via paid parking area at TXK airport.





**Exhibit 3**  
**Assignment of Contracts and Assets**

1. **Contingencies**: Assignment of Texarkana Regional Airport (TXK) electricity meters and solar structures is contingent upon award of the Arkansas Energy Performance Contracting Program – Revolving Loan Lease Fund (AEPC- RLLF) to Lessor.
2. **Procurement & Contracts**: Lessor shall abide by all prior procurement processes completed by Lessee and the Arkansas Energy Office in accordance with State of Arkansas ESPC requirements. These include:
  - a. Releasing the RFP;
  - b. Choosing an ESCO;
  - c. Entering into an IGA Contract;
  - d. Entering into an EPC Contract after the IGA is delivered;

Understanding there will be no change to project cost by this transfer, Lessor will acquire existing contracts with selected Energy Services Company (ESCO), Entegrity Energy Solutions.

Lessor will reapply to the RLLF directly with required supporting documentation as required by AEO.

3. **Meters**: Upon approval of the AEPC-RLLF to fund the solar structure, Lessee shall assign ownership of all SWEPCO electricity meters to Lessor for the term of the Lease.
4. **Solar Structures**: Solar Structures shall be assigned to Lessor by Lessee for the term of the Lease
5. **Electricity Cost**: Lessee shall reimburse Lessor for all electricity cost based monthly based on actual cost through the term of the Lease
6. **Lessee Cash Contribution**

Lessee shall directly pay Contractor (Entegrity Energy Solutions) the value of the anticipated Investment Tax Credit, which is \$758,344. Contract Price shall be based on the annual payment of the AEPC-RLLF loan after this cash contribution.

7. **Investment Tax Credits**

As System owner, Lessor is expected to receive a Direct Pay Investment Tax Credit (ITC) equal to 34% of the system cost (\$758,344). This is per the terms of the Inflation Reduction Act of August 2022.

Upon receipt, the full value of this ITC shall be assigned to Lessee. If actual ITC is less than the anticipated value, Lessee shall be responsible for any difference. This would not change the terms of the Contract Price as Lessee shall provide Cash Contribution (see previous section) equal to the value of the anticipated ITC.

Lessee shall cooperate with Lessor in securing the benefit of all Tax Credits.

**Exhibit 4**  
**Solar Carport Lease Agreement**  
**General Terms and Conditions**

8. **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.

9. **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 Utility gives Lessee 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 Lessee reasonably objects within five (5) days of the date of such notice. Upon Lessee’s request, Lessor will give Lessee copies of certificates of completion or similar documentation from Lessor’s contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Lessee at the Facility (the “**Utility**”), as set forth on **Exhibit 2**. This Agreement is effective as of the Effective Date and Lessee’s failure to enable Lessor to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Lessee’s obligations to make payments that otherwise would have been due under this Agreement.

10. **Billing and Payment.**

- a. **Monthly Charges.** Lessee shall pay Lessor monthly at the rate shown in **Exhibit 1** (the “**Contract Price**”).
- b. **Monthly Invoices.** Lessor shall invoice Lessee monthly, 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 rates applicable to, and charges incurred by, Lessee under this Agreement and (iii) the total amount due from Lessee. The Contract Price includes ACH invoicing.
- c. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) 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).

11. **Environmental Attributes**

As specified on **Exhibit 1**, Lessee is the owner of all Environmental Attributes, including Renewable Energy Credits. Lessor shall cooperate with Lessee in obtaining, securing and transferring all Environmental Attributes, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes. Lessor shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Lessee.

“**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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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. Lessee and Lessor shall file all tax returns in a manner consistent with this Section 5. 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.

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

12. **Conditions to Obligations.**

- a. **Conditions to Lessor’s Obligations.** Lessor’s obligations under this Agreement are conditioned on the completion of the following conditions to Lessor’s reasonable satisfaction on or before the Condition Satisfaction Date:
- i. Approval of the Lessor to receive funding for System through the AEPC-RLLF program
  - ii. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the “**Premises**”) including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
  - iii. Successful completion of the System by Contractor.
  - iv. Confirmation that Lessor will obtain all applicable Environmental Incentives and Tax Credits;
  - v. Receipt of all necessary zoning, land use and building permits; and
  - vi. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system.
- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Lessor may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement.
- c. **Conditions to Lessee’s Obligations.** Lessee’s obligations under Section 4(a) are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date.

13. **Lessor’s Rights and Obligations.**

- a. **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 Lessee’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.



14. **Lessee's Rights and Obligations.**

- a. **Insurance.** Lessee shall maintain insurance on System with Lessor and City of Texarkana, TX listed as named. Insurance shall cover the full value of the system and insure against potential damage from weather, theft, accidental damage, and other potential incidents
- b. **Permits and Approvals.** Lessee, with Lessor's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use and building permits required to construct, install and operate the System; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

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

- c. **Standard System Repair and Maintenance.** Lessee shall assist with construction and installation of the System at the Facility. During the Term, Lessee will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, including any repairs or maintenance resulting from Lessee's negligence, willful misconduct or breach of this Agreement. Lessor shall not be responsible for any work done by others on any part of the System unless Lessor authorizes that work in advance in writing. Lessor shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Lessor or Lessor's contractors. If the System requires repairs for which Lessee is responsible, Lessee shall pay for diagnosing and correcting the problem.
- d. **Use of Contractors and Subcontractors.** Lessee 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, Lessee shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- e. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- f. **Maintenance of Facility.** Lessee shall, at its sole cost and expense, maintain the Facility in good condition and repair. Lessee will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility from the Utility. Lessee is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Lessee's equipment that utilizes the System's outputs. Lessee shall properly maintain in full working order all of Lessee's electric supply or generation equipment that Lessee may shut down while utilizing the System. Lessee shall promptly notify Lessor of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- g. **No Alteration of Facility.** Lessee shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Lessor's prior written consent. If Lessee wishes to make such alterations or repairs, Lessee shall give prior written notice to Lessor, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Lessor the opportunity to advise Lessee in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Lessee shall be responsible for all damage to the System caused by Lessee or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Lessee's alterations and repairs, shall be done by Lessor or its contractors at Lessee's cost. In addition, Lessee shall pay Lessor an amount equal to the sum of (i) payments that Lessee would have made to Lessor hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Lessor would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Lessor would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Lessor (or, if Lessor is a pass-through entity for tax purposes, Lessor's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal

shall be in accordance with the procedures in Section 10(b). All of Lessee's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

- h. Liens.** Lessee shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Lessee shall immediately notify Lessor in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Lessor, and shall indemnify Lessor against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 22.a), Lessor 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.
- i. Security.** Lessee shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Lessee. Lessee will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

**15. Change in Law.**

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

If any Change in Law occurs that has a material adverse effect on the cost to Lessor of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Lessee from Lessor 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 Lessor 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.

**16. Default, Remedies and Damages.**

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

  - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
  - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - iv. Lessee loses its rights to occupy and enjoy the Premises;

- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or

**b. Remedies.**

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. Lessee. If Lessee is the Defaulting Party and Lessor terminates this Agreement, the Termination Payment to Lessor shall be equal to the balance of the RLLF loan at the time of termination and ownership of the Facility and Meters shall revert to Lessee
  - B. Lessor. If Lessor is the Defaulting Party and Lessee terminates this Agreement, the Termination Payment to Lessor shall be equal to the balance of the RLLF loan at the time of termination and ownership of the Facility and Meters shall revert to Lessee
  - C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 16(b), then following such termination, Lessor shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

**17. 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, 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. Lessee's Representations, Warranties and Covenants. Lessee represents and warrants to Lessor the following as of the Effective Date and covenants that throughout the Term:

- i. **License.** Lessee has title to or a leasehold or other property interest in the Premises. Lessee has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Lessee or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Lessee is bound or that affects the Facility. If Lessee does not own the Premises or Facility, Lessee has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Lessee nor the performance by Lessee 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 Lessee is a party or by which Lessee or the Facility is bound.
- iii. **Accuracy of Information.** All information provided by Lessee to Lessor, as it pertains to the Facility's physical configuration, Lessee's planned use of the Facility, and Lessee's estimated electricity requirements, is accurate in all material respects.
- iv. **Lessee Status.** Lessee 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. **Hazardous Substances.** There are no Hazardous Substances at, on, above, below or near the Premises.

**18. System and Facility Damage and Insurance.**

**a. System and Facility Damage.**

- i. **Lessee's Obligations.** If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Lessor's gross negligence or willful misconduct, such that the operation of the System and/or Lessee's ability to accept the electric energy produced by the System are materially impaired or prevented, Lessee shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Lessee may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

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

- i. **Lessor's Insurance.** Lessor 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. **Lessee's Insurance.** Lessee 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.

**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.

**19. Ownership; Option to Lessee.**

- a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Lessor shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Lessor and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Lessor and Lessee agree that the Lessor (or the designated assignee of Lessor 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. Lessee covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessee shall provide a disclaimer or release from such lienholder. If Lessee is the fee owner of the Premises, Lessee consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Lessee is not the fee owner, Lessee will obtain such consent from such owner. Upon request, Lessee agrees to deliver to Lessor a non-disturbance agreement in a form reasonably acceptable to Lessor from the owner of the Facility (if the Facility is leased by Lessee), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Lessee does not own the Premises or Facility, Lessee shall provide to Lessor immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Lessee's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the Initial Term, so long as Lessee is not in default under this Agreement, Lessee may purchase the System from Lessor for a purchase price equal to \$1. Lessee must provide a notification to Lessor of its intent to Lessee 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 Lessee shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such Lessee shall be on an as-is, where-is basis, and Lessor shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Lessor shall assign to Lessee any manufacturers warranties that are in effect as of the Lessee, and which are assignable pursuant to their terms.

## 20. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs 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 17 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 20(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 20(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 20(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 20(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.** Lessor shall indemnify, defend and hold harmless all of Lessee's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 20(c)(i)) to the extent deposited, spilled or otherwise caused by Lessor or any of its contractors or agents. Lessee shall indemnify, defend and hold harmless all of Lessor's

Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Lessor or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.

- 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 (1) in the event that Lessor is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Lessee, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Lessor is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Lessee causes Lessor to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.
- ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 26 and damages that result from the willful misconduct of Lessor, Lessor’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Lessee under this Agreement. The provisions of this Section (20)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Lessor must be brought within one (1) year after the cause of action accrues.

**21. Force Majeure.**

- a. **“Force Majeure”** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Lessee's ability to make payment.
- d. If a Force Majeure event continues for a period of thirty (30) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

22. **Assignment.**

- 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, Lessor may, without the prior written consent of Lessee, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Lessor, (iii) assign this Agreement and the System to any entity through which Lessor 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 Lessor (provided that Lessor shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Lessor's obligations hereunder by the assignee). In the event of any such assignment, the Lessor shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Lessor's right and/or obligations under this Agreement, shall not result in any change to Lessee's rights and obligations under this Agreement. Lessee's consent to any other assignment shall not be unreasonably withheld if Lessee has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

23. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the State of Arkansas where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Miller County, Arkansas. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. 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, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- 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 4 (Representations and Warranties), Section 13(a) (No Warranty), Section 18(b) (Insurance Coverage), Section 20 (Indemnification and Limits of Liability), Section Error! Reference source not found. (Confidentiality and Publicity), Section 23(a) (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(j) (Service Contract), Section 23(k) (No Partnership) Section 23(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 23(n) (No Third Party Beneficiaries).
- 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 Lessee or Lessor shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **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 Lessor 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 Lessor does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Lessor shall have the right to terminate this Agreement without further liability, and Lessor shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Lessee will not take the position on any tax return or in any other filings suggesting that it is anything other than a Lessee of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.



- n. **No Third Party Beneficiaries.** Except 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.
  
- o. **Bonding.**
  - i. **Performance bond liability.** Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Lessor under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
  - ii. **Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.
  - iii. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.