

From: [SPV COMMENTER 1]

Sent: Monday, September 28, 2015 6:29 PM

To: Illinois-RFP

Subject: [SPV COMMENTER 1] Comments on Draft IPA REC Purchase & Sale Agreement

[SPV COMMENTER 1] appreciates the opportunity to review and provide input on the IPA's revised proposed form of REC Purchase and Sale Agreement. While the IPA's recent revisions address a number of issues with the original agreement, significant issues remain. In particular, we note that the contract does not provide the Seller with a meaningful remedy in case of a Buyer default for failure to pay. At a minimum, the agreement should provide that Seller has all remedies available at law and equity, rather than merely the right to terminate the agreement.

Attached you will find (1) a summary table that provides an overview of our comments, and (2) a redline of the agreement, detailing our suggested changes.

Thanks for your consideration.

Best regards,

[SPV COMMENTER 1]

[SPV COMMENTER 1] appreciates the opportunity to review and provide input on the IPA's revised proposed form of REC Purchase and Sale Agreement. While the IPA's recent revisions address a number of issues with the original agreement, significant issues remain. In particular, we note that the contract does not provide the Seller with a meaningful remedy in case of a Buyer default for failure to pay. At a minimum, the agreement should provide that Seller has all remedies available at law and equity, rather than merely the right to terminate the agreement. The following table details this and our other remaining concerns with the agreement.

Item	Section	Issue/Comment
1	Cover Sheet Exhibit A – page 2, Article 3, System Description Appendix 3 – Host's Acknowledgement and Certification	IPA's form requires that the Host (who has already gone through an extensive sales, permitting, and interconnection process) review and sign another document. If the Seller has a sales contract with the Host, evidence (signature page, or a self-certification by the Seller) of the sales contract should be a sufficient proxy for the Host Acknowledgement.
2	Cover Sheet Exhibit A – page 2, Section 1.28	<i>Guaranteed System Energized Date no later than 12 months after bid date.</i> The definition of Guaranteed System Energized Date (GSED) has requires that the system be registrated with PJM-EIS GATs or M-RETS, thereby reducing the developer's timeline for achieving this key deadline. [SPV COMMENTER 1] recommends omitting registration as a requirement to achieving GSED, particularly given that the Delivery Term Start Date (Section 2.2.1) already takes registration into account as part of the overall contract timeline.
3	3.6 Energized Date	<i>Extensions of Guaranteed Energized Date are granted (1) at Buyer's sole discretion, (2) on a case by case basis, and (3) are limited to circumstances outside of Seller's control, such as utility or third-party delays.</i> If Seller failed to meet the Guaranteed Energized Date due to force majeure or delay or unforeseen requirement by a third party (such as the utility (including a System upgrade), a regulatory body, or the registry), the extension should be automatic.
4	3.9.2, 3.9.3 (Final System Size)	<i>Automatic termination of Agreement in case of any change in size that results in a change in Size Category</i> We suggest that Seller have an opportunity to request the Buyer's consent to any change of size that would result in a change in Size Category.
5	3.9.5 (System Size)	<i>Maximum Contract Quantity will not be adjusted to reflect Final System Size.</i>

		<p>We suggest deleting or modifying this section. An unintended result of this provision is that Sellers will likely bid in the largest system size possible for a site to ensure access to the Maximum Contract Quantity. Installed systems will thus likely be smaller, resulting in overall under-delivery in the program.</p>
6	3.10 Substitute Systems	<p><i>Substitution of a System is subject to Buyer's approval, which it may withhold in its sole discretion.</i></p> <p>So long as the substitute meets all of the same requirements as the original system, approval should be automatic.</p>
7	8.3 (Payment)	<p><i>Payment date isn't clearly stated.</i></p> <p>Payment should be due no later than 30 days after invoice (note that because invoicing and payment are on a quarterly basis, Seller will not start receiving payment for a minimum of four months after it begins delivery).</p>
8	8.5, 8.6 (Late Payment), Appendix A.1, Section 1.1	<p><i>Seller's only remedy for Buyer's failure to pay is termination of the Agreement, without further liability to either party/late payment charge.</i></p> <p>This provision would allow Buyer to default under the Agreement without any consequence to Buyer or remedy for Seller and could present a significant impediment to Sellers' ability to finance projects using this contract as collateral. There is absolutely no deterrent in this Agreement for a Buyer failure to pay. Seller should have a clear right to a termination payment in case of a payment default by Buyer. The market standard in REC agreements for an uncured Buyer default is a termination payment equal to the difference between the market price for the RECs and the contract price, multiplied by the number of RECs remaining to be delivered. At a minimum, Seller should have the right to pursue all remedies at law and equity for a Buyer default based on failure to pay.</p>
9	9.2 (Return of Performance Assurance)	<p><i>Performance Assurance is returned upon Buyer's first payment of RECs.</i></p> <p>Given that the earliest Buyer will make payment is 4-5 months after Seller commences delivery of RECs, this timeline for return of the Performance Assurance presents an unnecessary cost for Seller. Performance Assurance should be released/returned as soon as the conditions precedent in Section 5.1 have been satisfied.</p>
10	12.1 Appropriations Approval	<p><i>If Buyer is unable to obtain appropriations for the Agreement, the Agreement is terminated without any further liability.</i></p> <p>Buyer should be prohibited from entering an agreement for a</p>

[SPV COMMENTER 1]

		similar product if Buyer fails to appropriate funds for this agreement (e.g., Buyer should not be able to terminate this agreement simply because cheaper RECs have become available).
11	13.2.5	<i>Seller's failure to deliver RECs for 6 months is an event of default.</i> If Seller is unable to deliver due to force majeure, the failure should not be an event of default.
12	13.3.4 (new section)	<i>Seller's only remedy for a Buyer default is to terminate the agreement. Seller should have a make-whole remedy.</i>

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

**RENEWABLE ENERGY CREDITS
PURCHASE AND SALE AGREEMENT**

by and between

Illinois Power Agency

and

[Seller]

[DRAFT]

Contract No: _____

Posted: September 18, 2015

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Contract No: _____

Posted: September 18, 2015

**RENEWABLE ENERGY CREDITS
PURCHASE AND SALE AGREEMENT**

COVER SHEET

This *Renewable Energy Credits Purchase and Sale Agreement* ("Agreement") is entered into as of the following date: _____ (the "Effective Date").

This Agreement includes this Cover Sheet together with the Exhibits and Appendices hereto. The Parties to this Agreement are the following:

SELLER		BUYER
	<i>Party Name</i>	Illinois Power Agency
	<i>Address</i>	160 North LaSalle Street, Suite C-504 Chicago, Illinois 60601
	<i>Business Website</i>	http://www.illinois.gov/ipa
US Federal _____	<i>Tax ID Numbers</i>	US Federal _____
	<i>Jurisdiction of Organization</i>	Illinois
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> LLP <input type="checkbox"/> LLC <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other: _____	<i>Company Type</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> LLP <input type="checkbox"/> LLC <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Other: _____

Contract Number (to be entered by Buyer): _____

Contract No: _____

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CONTACT INFORMATION		
SELLER		BUYER
ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____	<i>General</i> <i>(day to day/ administrative)</i>	ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____
ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____	<i>Contract</i>	ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____
ADDRESS _____ ATTN _____	<i>Legal Notices</i>	ADDRESS _____ ATTN _____
ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____	<i>Performance Assurance</i>	ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____

ACCOUNTING INFORMATION		
ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____	<ul style="list-style-type: none"> · Invoices · Payments · Settlements 	ADDRESS _____ ATTN _____ TEL#: _____ FAX#: _____ EMAIL _____
BANK _____ BANK ADDRESS: _____ ABA: _____ ACCT: _____ <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS OTHER DETAILS: _____	<i>Wire Transfer Numbers (IF APPLICABLE)</i>	BANK _____ BANK ADDRESS: _____ ABA: _____ ACCT: _____ <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	<i>Checks (IF APPLICABLE)</i>	ATTN: _____ ADDRESS: _____
BANK _____ BANK ADDRESS: _____ ABA: _____ ACCT: _____ <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS OTHER DETAILS: _____	<i>ACH Numbers (IF APPLICABLE)</i>	BANK _____ BANK ADDRESS: _____ ABA: _____ ACCT: _____ <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS OTHER DETAILS: _____

BUYER'S REC REGISTRY ACCOUNT INFORMATION		
PJM-EIS GATS		M-RETS
Account: _____	<i>Account</i>	Account: _____

Contract No: _____

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

_____ ("Seller")	<u>Party Name</u>	<u>Illinois Power Agency</u> ("Buyer")
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
_____, 20__	<u>Date</u>	_____, 20__
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
	<u>Date</u>	_____, 20__
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
	<u>Date</u>	_____, 20__

Contract No: _____

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Renewable Energy Credits Purchase and Sale Agreement

**System Identification Form
For Systems 25 kW and Above
(Exhibit A to Cover Sheet)**

Contract Number: _____ (Number provided by Buyer)

The Parties hereby agree that Seller will provide Renewable Energy Credits from the System described below:

Bid Date	_____, 20__
REC Product	<input checked="" type="checkbox"/> Solar-Photovoltaic <input type="checkbox"/> Other: _____
Size Category	<input type="checkbox"/> ≥ 25 kW and ≤ 500 kW <input type="checkbox"/> > 500 kW and $\leq 2,000$ kW

Article 3 System Description	Name of System (Optional)	
	System Site/Location (including Street, City, Zip)	
	Customer Account Number with the Interconnecting Utility (electric utility, alternative retail electric supplier, municipal utility, or a rural electric cooperative) in Illinois	
	Is the System owner the Host?	<input type="checkbox"/> Yes <input type="checkbox"/> No. If no, Seller must provide a Host Acknowledgement in the form attached hereto as Appendix 3 <u>the signature page of the contract granting Seller the right to install and operate the System and retain the SRECs.</u>
	Planned Installed Capacity	_____ kW (DC)
Article 3 Is this a substitute system?	<input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, original Contract Number: _____	

Contract No: _____

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Article 7 Maximum Contract Quantity	_____ RECs (Planned Installed Capacity / 1000) x Assumed Capacity Factor x 8760 hours x 5 years
Assumed Capacity Factor	14.38%
Article 7 Purchase Price	\$ _____ per REC
Article 9 Performance Assurance (amount)	\$ _____ (\$8 x the Maximum Contract Quantity of RECs)
Maximum Contract Amount	\$ _____ (i.e., (Purchase Price + \$8) x Maximum Contract Quantity)
Earliest Energized Date	January 21, 2015 (the earliest date by which the System can be Energized under the terms of this Agreement).
Is the System Energized?	<input type="checkbox"/> Yes. The Energized Date, which is the date by which the System has been turned on for a period of 24 consecutive hours and is operational for purposes of generating electricity regardless of whether the system has registered with a REC tracking system, is: _____ <input type="checkbox"/> No. The System must be Energized and registered with PJM-EIS-GATS or M-RETS no later than the Guaranteed Energized Date of _____, which is no later than 12 months after the Bid Date.

As a material condition of this Agreement, the Seller warrants that the System has been or agrees that the System will be "Installed" by a "Qualified Person" as set forth in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). The term "Installed" and "Qualified Person" shall have meaning ascribed to them in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). Seller will be required to confirm that the System complies with this requirement in its System Energized Notification Form (Exhibit C). Failure to comply with this provision is a material breach of this Agreement.

Contract No: _____

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Renewable Energy Credits Purchase and Sale Agreement

**System Identification Form
For Systems below 25 kW
(Exhibit B to Cover Sheet)**

Contract Number: _____ (Number provided by Buyer)

Bid Date	_____, 20__	
REC Product	<input checked="" type="checkbox"/> Solar-Photovoltaic <input type="checkbox"/> Other: _____	
Size Category	<input checked="" type="checkbox"/> < 25 kW	
Is the Seller identifying a particular System?	<input type="checkbox"/> Yes. Seller is required to complete Part 1 of this Exhibit B. <input type="checkbox"/> No. Seller is required to complete Part 2 of this Exhibit B.	
<p>Part 1 of Exhibit B (Identified Systems) This part of Exhibit B to be completed when a System is identified and can be described as provided below. The Parties hereby agree that Seller will provide Renewable Energy Credits from the System described below:</p>		
Article 3 System Description	Date that this Part 1 of Exhibit B is completed	
	Name of System (Optional)	
	System Site/Location (including Street, City, Zip)	
	Customer Account Number with the Interconnecting Utility (electric utility, alternative retail electric supplier, municipal utility, or a rural electric cooperative) in Illinois	
	Is the System owner the Host?	<input type="checkbox"/> Yes <input type="checkbox"/> No. If no, Seller must provide the signature page of the contract granting Seller the right to install and operate the System and retain the SRECSa Host Acknowledgement in the form attached hereto as Appendix 3

Contract No: _____

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	Planned Installed Capacity	_____ kW (DC)
Article 3 Is this a substitute system?	<input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, original Contract Number: _____	
Is this a System that is newly identified for an agreement based on a Forecast REC Quantity?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If yes, original Contract Number: _____	
Article 7 Maximum Contract Quantity	_____ RECs (Planned Installed Capacity / 1000) x Assumed Capacity Factor x 8760 hours x 5 years	
Assumed Capacity Factor	14.38%	
Article 7 Purchase Price	\$ _____ per REC	
Article 9 Performance Assurance (amount)	\$ _____ (\$8 x the Maximum Contract Quantity of RECs)	
Maximum Contract Amount	\$ _____ (i.e., (Purchase Price + \$8) x Maximum Contract Quantity)	
Earliest Energized Date	January 21, 2015 (the earliest date by which the System can be Energized under the terms of this Agreement).	
Is the System Energized?	<input type="checkbox"/> Yes. The Energized Date, which is the date by which the System has been turned on for a period of 24 consecutive hours and is operational for purposes of generating electricity regardless of whether the system has registered with a REC tracking system, is: _____ <input type="checkbox"/> No. The System must be Energized and registered with PJM-EIS-GATS or M-RETS no later than the Guaranteed Energized Date of _____, which is no later than 12 months after the Bid Date, or 12 months of the Effective Date if this Agreement is for a System that is newly identified for an agreement based on a Forecast REC Quantity.	
<p>As a material condition of this Agreement, the Seller warrants that the System has been or agrees that the System will be "Installed" by a "Qualified Person" as set forth in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). The term "Installed" and "Qualified Person" shall have meaning ascribed to them in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). Seller will be required to confirm that the System complies with this requirement in its System Energized Notification Form (Exhibit C). Failure to comply with this provision is a material breach of this Agreement.</p>		

Contract No: _____

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Part 2 of Exhibit B (Forecast REC Quantity) This part of Exhibit B to be completed when a Seller receives an award on the basis of a Forecast REC Quantity for the portion (which may be the entirety) of the Forecast REC Quantity for which Systems cannot be identified and described using Part 1 of this Exhibit.	
Date that this Part 2 of Exhibit B is completed or last amended	
Earliest System Identification Date	_____, 20__ (first day of Contract Quarter immediately following the Bid Date or 20 Business Days following the Bid Date, whichever is later)
Guaranteed System Identification Date (for identification of all Systems)	_____, 20__ (6 months after the Bid Date)
Forecast REC Quantity	_____ RECs
Purchase Price	\$_____ per REC
Have some Systems been identified?	<input type="checkbox"/> No. Remaining Forecast REC Quantity is Forecast REC Quantity Above <input type="checkbox"/> Yes. If yes, Contract Numbers, Maximum Contract Quantities, and Remaining Forecast REC Quantity: Contract Number _____ (Number provided by Buyer) Maximum Contract Quantity: _____ Contract Number _____ (Number provided by Buyer) Maximum Contract Quantity: _____ Contract Number _____ (Number provided by Buyer) Maximum Contract Quantity: _____ Contract Number _____ (Number provided by Buyer) Maximum Contract Quantity: _____ Remaining Forecast REC Quantity: _____
Performance Assurance (amount)	\$_____ (\$16 x the Remaining Forecast REC Quantity)
Maximum Contract Amount	\$_____ (i.e., (Purchase Price + \$16) x Maximum Contract Quantity)

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As a material condition of this Agreement, the Seller agrees that the System will be "Installed" by a "Qualified Person" as set forth in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). The term "Installed" and "Qualified Person" shall have meaning ascribed to them in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). Seller will be required to confirm that the System complies with this requirement in its System Energized Notification Form (Exhibit C). Failure to comply with this provision is a material breach of this Agreement.

The Seller further agrees to be bound by all conditions related to converting the Forecast REC Quantity into a Maximum Contract Quantity through the identification of Systems. For each such System that will be identified, the Seller warrants that the Seller will execute an agreement identical to the present Agreement except for inclusion of the description of such System.

Contract No: _____

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Renewable Energy Credits Purchase and Sale Agreement

**System Energized Notification Form
(Exhibit C to Cover Sheet)**

Instructions: This form is to be completed by Seller and provided to Buyer once the installation of the System is complete, after the System is registered with PJM EIS GATS/M-RETS, and after the System has commenced generating electricity for a period that exceeds 24 hours. This form must be signed and sent to the Illinois Power Agency (“Buyer”) for Buyer’s acceptance prior to the Seller’s first REC Delivery.

Contract Number: _____

_____, the Seller (“Seller”) referenced in the Renewable Energy Credits Purchase and Sale Agreement with Contract Number referenced above (“the Agreement”), hereby swears and certifies to the following concerning the photovoltaic system from which the Illinois Power Agency (“Buyer”) has agreed to purchase renewable energy credits under the Agreement (“the System”):

Seller certifies that the System **is a “new” system** – i.e., not permanently “energized” (i.e., energized for more than 24 consecutive hours at its current site regardless of whether it is registered with PJM-EIS GATS or M-RETS) prior to January 21, 2015.

As part of this certification, Seller has submitted the following to substantiate that the System is a “new” system (Seller is required to provide only one of the documents indicated below to substantiate that the System is a “new” system. Seller may provide more than one of the documents indicated below, as appropriate, if any one single document is insufficient to substantiate that the System is a new system. Check below the items that are being submitted):

- Interconnection Agreement;
- Certificate of Completion of Interconnection;
- Comparable document to Certificate of Completion as serving proof of Interconnection Agreement
- Net metering application approval letter;
- Final system inspection confirmation;
- PJM-EIS GATS/M-RETS system registration application and approval letter;
- Permission to operate letter;
- Other: _____.

Seller certifies that, to the best of Seller’s knowledge and belief, the date on which the System was energized is _____, 20____.

Seller certifies that it has reviewed and understands the provisions of Section 1-56(i) of the Illinois Power Agency Act pertaining to the requirement that participating photovoltaic systems be “installed” by a “qualified person” (20 ILCS 3855/1-56(i)(1)), and that the System **was installed by a qualified person** as those terms are used in the Illinois Power Agency Act.

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Seller certifies that the System is a photovoltaic device that **meets the definition of “distributed renewable energy generation devices”** as reflected in Illinois law, requiring the following:

- Interconnected at the distribution system level of an electric utility, alternative retail electric supplier, municipal utility, or a rural electric cooperative;
- Located on the customer side of the customer’s utility meter and is primarily used to offset that customer’s electricity load; and
- Limited in nameplate capacity to no more than 2,000 kW.

Seller certifies that, to the best of Seller’s knowledge and belief, the following is true:

Energized Date	_____ (i.e., Date by which the System has been turned on for a period of 24 consecutive hours and is operational for purposes of generating electricity regardless of whether the system has registered with a REC tracking system)
Final System Size	_____ kW (DC Rating)
PJM-EIS GATS or M-RETS Unit ID Number	_____
Seller’s PJM-EIS GATS or M-RETS Account	_____
Article 3 and Article 4 Interconnecting Utility	<input type="checkbox"/> Commonwealth Edison Company <input type="checkbox"/> Ameren Illinois Company <input type="checkbox"/> Other: _____ As set forth in Section 4.1.2 of the Agreement, the System has a fully executed Interconnection Agreement. Seller provides proof of an Interconnection Agreement accompanying its submission of this System Energized Notification Form via at least one of the documents listed below (check applicable): <input type="checkbox"/> Interconnection Agreement; <input type="checkbox"/> Certificate of Completion of Interconnection; <input type="checkbox"/> Comparable document to Certificate of Completion serving as proof of Interconnection Agreement;

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Further, Seller understands that should, at any time, any of the above certifications be found to be erroneous, the Illinois Power Agency may consider an erroneous certification to be an Event of Default under Article 13 of the Agreement and may exercise remedies including, but not limited to, withholding of payments and termination of the Agreement. Seller also understands that a failure to complete this Form prior to the Seller's first REC Delivery may also be considered an Event of Default.

Certified By: _____ ("Seller")	<u>Party Name</u>	Accepted By: <u>Illinois Power Agency</u> ("Buyer")
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
_____, 20____	<u>Date</u>	_____, 20____
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
	<u>Date</u>	_____, 20____
	<u>Signature</u>	
	<u>Printed Name</u>	
	<u>Title</u>	
	<u>Date</u>	_____, 20____

Contract No: _____

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Renewable Energy Credits Purchase and Sale Agreement

**Delivery Term Declaration Form
(Exhibit D to Cover Sheet)**

To be **completed by Buyer** and provided to Seller on or after the Date of Initial REC Delivery:

Contract Number: _____

<p>Article 2 Date of Initial REC Delivery</p>	<p>_____, 20____</p> <p>(If the Final System Size is greater than 5 kW, this date must be within 90 calendar days of when the System is Energized and registered with PJM-EIS GATS or M-RETS, or within 90 calendar days of the Effective Date of this Agreement if the System is Energized and registered with PJM-EIS GATS or M-RETS prior to the Effective Date of this Agreement.</p> <p>If the Final System Size is equal to or less than 5 kW, this date must be within 180 calendar days of when the System is Energized and registered with PJM-EIS GATS or M-RETS, or within 180 calendar days of the Effective Date of this Agreement if the System is Energized and registered with PJM-EIS GATS or M-RETS prior to the Effective Date of this Agreement.</p> <p>This date may be extended by Buyer at its sole discretion, which shall be exercised reasonably. A request for extension may be made by Seller to Buyer in writing in accordance with Article 14.)</p>
<p>Article 2 Delivery Term Start Date</p>	<p><input type="checkbox"/> January 1, 20____</p> <p><input type="checkbox"/> April 1, 20____</p> <p><input type="checkbox"/> July 1, 20____</p> <p><input type="checkbox"/> October 1, 20____</p>
<p>Article 2 Delivery Term End Date</p>	<p>60 months following the Delivery Term Start Date: _____, 20____</p>
<p>Article 2 Contract Expiration Date</p>	<p>Two (2) calendar months after the Delivery Term End Date, and absent Seller granting an extension, shall in no event be later than <u>March 1, 2023</u>.</p>

Contract No: _____

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RENEWABLE ENERGY CREDITS PURCHASE AND SALE AGREEMENT

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are intended to facilitate the purchase and sale of Renewable Energy Credits ("RECs") from Distributed Renewable Energy Generation Devices in accordance with Section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)) as enacted through Public Act 98-0672, as applicable.

The Illinois State Requirements attached hereto as Appendix 1.1-Appendix 1.5 will constitute a part of the Agreement between the Parties hereto. In case of a conflict between the provisions of the Illinois State Requirements and these General Terms and Conditions, any requirements pursuant to Illinois law shall control, followed by these General Terms and Conditions, then by any remaining Illinois State Requirements.

Article 1. Definitions

As used throughout this Agreement, the following terms shall have the definitions set forth in this Article 1.

- 1.1. "Additional Agreement" is a new agreement that is being executed either: (a) for a newly identified system as set forth in Section 3.2 or (b) for a substitute system as set forth in Section 3.10.
- 1.2. "Agreement" means this Renewable Energy Credits Purchase and Sale Agreement.
- 1.3. "Assumed Capacity Factor" means the standard capacity factor indicated in the System Identification Form that will be assumed for the System for purposes of determining the Maximum Contract Quantity.
- 1.4. "Bankrupt" means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 30 calendar days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debts as they fall due.

Contract No: _____

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- 1.5. “Bankruptcy Code” means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.
- 1.6. “Bid Date” means the date entered as such in the System Identification Form. This is the date when bids are due for the procurement event for which the award of this Agreement is based.
- 1.7. “Business Day” means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.
- 1.8. “Contract Number” means the unique contract identifier reference indicated by Buyer for this Agreement as indicated in the Cover Sheet.
- 1.9. “Contract Quarter” shall have meaning set forth in Article 2.
- 1.10. “Date of Initial REC Delivery” shall have meaning set forth in Article 2.
- 1.11. “Defaulting Party” shall have meaning set forth in Article 13.
- 1.12. “Deliver,” “Delivered” or “Delivery” means the transfer and receipt of RECs via the PJM-EIS GATS or M-RETS.
- 1.13. “Delivery Term” shall have meaning set forth in Article 2.
- 1.14. “Delivery Term End Date” shall have meaning set forth in Article 2.
- 1.15. “Delivery Term Start Date” shall have meaning set forth in Article 2.
- 1.16. “Earliest Energized Date” is January 21, 2015 and is the earliest date by which the System can be Energized under the terms of this Agreement.
- 1.17. “Earliest System Identification Date” means the date entered as such in Part 2 of Exhibit B to the Cover Sheet. This is the earliest date by which a Seller who has been awarded this Agreement based on a Forecast REC Quantity may provide Buyer with an amended Part 2 of Exhibit B and may execute an Additional Agreement for each such identified system. This is generally the first day of Contract Quarter immediately following the Bid Date or twenty (20) Business Days after the Bid Date, whichever is later.

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- 1.18. “Effective Date” means the date as indicated in the Cover Sheet.
- 1.19. “Energized” means the occurrence of the System being operational by being turned on for a period of 24 consecutive hours for purposes of generating electricity regardless of whether the System is or was registered with PJM-EIS GATS or M-RETS.
- 1.20. “Energized Date” is the date of first occurrence of when the System is Energized.
- 1.21. “Environmental Attributes” excludes electric energy and capacity produced, but means any other emissions, air quality, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of a renewable energy resource or low-carbon resource now or in the future eligible for procurement under Illinois law (See 20 ILCS 3855/1-56, 20 ILCS 3855/1-75, et. seq.), whether existing as of the Effective Date or in the future, and whether as a result of any present or future local, state or federal laws or regulations or local, state, national or international voluntary program, as well as any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the System’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any certificates or credits issued pursuant to the PJM-EIS GATS or M-RETS in connection with energy generated by the System; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of energy by the System; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the System; or (iii) any state, federal or private grants relating to the construction or ownership of the System or the output thereof. If during the Delivery Term, a change in laws or regulations occurs that creates value in Environmental Attributes, then at Buyer’s request, Seller shall cooperate with Buyer to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for Buyer.
- 1.22. “Event of Default” shall have meaning set forth in Article 13.
- 1.23. “Final System Size” means the final nameplate kilowatt (kW) DC output rating of the System as indicated in the System Energized Notification Form (Exhibit C).

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- 1.24. “Force Majeure” or “Force Majeure Events” shall have meaning set forth in Article 15.
- 1.25. “Forecast REC Quantity” means a quantity of RECs indicated in Part 2 of Exhibit B to the Cover Sheet, and is applicable when a Seller receive an award on the basis of RECs from System(s) that cannot be identified and described using Part 1 of Exhibit B as of the Effective Date.
- 1.26. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the solar electric generation industry with respect to producing electricity from the System. Good Utility Practice shall also include any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer’s warranties and recommendations. Good Utility Practice are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation solar industry in the United States.
- 1.27. “Governmental Authority” means the federal government, any state or local government or other political subdivision thereof (whether federal, state or local), any court and any administrative agency or other regulatory body, instrumentality, authority or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- 1.28. “Governmental Charges” shall have meaning set forth in Article 8.
- 1.29. “Guaranteed Energized Date” means the date entered as such in the System Identification Form or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. This is the latest date the System must be Energized ~~and registered with PJM EIS GATS or M RETS~~, and is generally 12 months from the Bid Date or 12 months from the Effective Date of this Agreement if this Agreement is for a newly identified System pursuant to an award based on a Forecast REC Quantity.
- 1.30. “Guaranteed System Identification Date” means the date entered as such in Part 2 of Exhibit B to the Cover Sheet or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. This is the latest date for Seller who has been awarded this Agreement based on a Forecast REC Quantity to identify system(s) and to execute an Additional Agreement for each such identified system. This is generally 6 months from the Bid Date.

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- 1.31. ~~“Host Acknowledgment” means an acknowledgement by the owner of the premises at which the System is installed in the form attached as Appendix 3 hereto.~~ Reserved.
- 1.32. “Interconnecting Utility” means the entity that owns the electric distribution system with which the System is directly interconnected.
- 1.33. “Interconnection Agreement” means an agreement with the Interconnecting Utility regarding the interconnection of the System to the electric distribution system of the Interconnecting Utility, as the same may be amended from time to time. A fully executed Certificate of Completion (or comparable document) may serve as proof of an Interconnection Agreement.
- 1.34. “Installed” shall have meaning ascribed to it in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)).
- 1.35. “Letter of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution in a form attached hereto as Appendix 2 or reasonably acceptable to the Buyer. Costs of a Letter of Credit shall be borne solely by the applicant for such Letter of Credit.
- 1.36. “M-RETS” means the Midwest Renewable Energy Tracking System used to facilitate the issuance, transfer and retirement of RECs.
- 1.37. “M-RETS Administrator” shall have meaning set forth in M-RETS agreements.
- 1.38. “M-RETS Unit ID Number” means the unique identifier assigned by M-RETS to the System.
- 1.39. “Maximum Contract Quantity” means the maximum number of RECs that Buyer may be obligated to purchase under this Agreement.
- 1.40. “Notifying Party” shall have meaning set forth in Article 13.
- 1.41. “Performance Assurance” means collateral in the form of cash or a Letter of Credit. Cash collateral held by Buyer shall not earn interest. In addition, Performance Assurance shall be deemed, for all legal purposes, to mean adequate assurance as such term is used in the Uniform Commercial Code (“UCC”) (810 ILCS 5) and the Bankruptcy Code and amendments thereto. The Parties specifically recognize that the use of Performance Assurance throughout this Agreement shall not limit any legal right, action or remedy that would have otherwise been available to the aggrieved party under either the UCC or

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Bankruptcy Code.

- 1.42. “PJM-EIS GATS” means the PJM-EIS Generation Attribute Tracking System used to facilitate the issuance, transfer and retirement of RECs.
- 1.43. “PJM-EIS-GATS Administrator” shall have meaning set forth in PJM-EIS GATS agreements.
- 1.44. “PJM-EIS GATS Unit ID Number” means the unique identifier assigned by PJM-EIS GATS to the System.
- 1.45. “Planned Installed Capacity” means the nameplate kilowatt (kW) DC output rating of the System as indicated in the System Identification Form.
- 1.46. “Project Documents” shall have meaning set forth in Article 16.
- 1.47. “Purchase Price” means the price as specified in the System Identification Form, for which Buyer will pay Seller for each REC under this Agreement.
- 1.48. “Qualified Institution” means a U.S. commercial bank or a foreign bank with a U.S. branch that: (1) is rated by at least two of the following three rating agencies: S&P, Moody’s, or Fitch; (2) if rated by S&P, has a credit rating of A- or higher from S&P; (3) if rated by Moody’s, has a credit rating of A3 or higher from Moody’s; and (4) if rated by Fitch, has a credit rating of A- or higher from Fitch.
- 1.49. “Qualified Person” shall have meaning ascribed to it in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)).
- 1.50. “REC” means a renewable energy credit or renewable energy certificate as issued by PJM-EIS GATS or M-RETS.
- 1.51. “REC Product” means the type of renewable energy resource as indicated in the System Identification Form.
- 1.52. “Remaining Forecast REC Quantity” shall have meaning set forth in Part 2 of Exhibit B to the Cover Sheet and Article 3.
- 1.53. “Revenue Quality Meter” means a measurement device determined by the Illinois Power Agency as capable of measuring the output of the System at the accuracy level published by the Illinois Power Agency as necessary for procurement event(s) pursuant to its supplemental procurement plan. Revenue Quality Meters include, but may not be limited to, ANSI-certified revenue-grade meters.

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1.54. “Seller’s Cost of Cover” means the difference between the Purchase Price and the amount per REC Seller is able to obtain in by Selling RECs to a substitute buyer multiplied by the total number of SRECs remaining to be delivered under the Agreement had the Agreement not been terminated. If Seller is unable to locate a substitute Buyer after using commercially reasonable efforts, Seller’s Cost of Cover shall be deemed to be the Purchase Price multiplied by the total number of SREC remaining to be delivered under the Agreement had the Agreement not been terminated.

~~1.54.1.55.~~ “Size Category” means the category associated with the Planned Installed Capacity as indicated in the System Identification Form.

~~1.55.1.56.~~ “System” shall have meaning set forth in Article 3.

~~1.56.1.57.~~ “Term of the Agreement” shall have meaning set forth in Article 2.

~~1.57.1.58.~~ “Transferee” shall mean the party which Seller is requesting from Buyer to transfer or assign Seller’s rights and obligations under the Agreement pursuant to Section 11.3.

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Article 2. Term of Agreement; Delivery Term

- 2.1. **Term of Agreement.** This Agreement shall commence as of the Effective Date and shall remain in effect through the earlier of: (a) two (2) calendar months after the end of the Delivery Term End Date so as to allow for the final settlement of all obligations hereunder, or (b) the Guaranteed System Identification Date if one is specified in Part 2 of Exhibit B to the Cover Sheet or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably or (c) the earlier termination of this Agreement in accordance with its terms (the “Term of the Agreement”). Earlier termination of this Agreement may occur as a result of the execution by the Parties of an Additional Agreement.
- 2.2. **Delivery Term.** The Delivery Term shall commence on the Delivery Term Start Date and end on the Delivery Term End Date, unless this Agreement is earlier terminated in accordance with the provisions hereof. Seller understands and agrees that under no circumstances shall the Delivery Term be extended beyond such five year period from the Delivery Term Start Date, irrespective of any delays in REC deliveries, whether or not due to one or more Force Majeure Events.
- 2.2.1. **Delivery Term Start Date.** If the Final System Size is greater than 5kW, then (a) Seller must initiate its first REC Delivery of the System to the Buyer’s PJM-EIS GATS account or M-RETS account, as applicable, within 90 calendar days of when the System is Energized and registered with PJM-EIS GATS or M-RETS, or (b) if the System is Energized and registered with PJM-EIS GATS or M-RETS prior to the Effective Date of this Agreement, then within 90 calendar days of the Effective Date of this Agreement. If the Final System Size is equal to or less than 5kW, then (a) Seller must initiate its first REC Delivery of the System to the Buyer’s PJM-EIS GATS account or M-RETS account, as applicable, within 180 calendar days of when the System is Energized and registered with PJM-EIS GATS or M-RETS, or (b) if the System is Energized and registered with PJM-EIS GATS or M-RETS prior to the Effective Date of this Agreement, then within 180 calendar days of the Effective Date of this Agreement. The deadline for the first REC Delivery may be extended by Buyer at its sole discretion, which shall be exercised reasonably. A request for extension may be made by Seller to Buyer in writing in accordance with Article 14. For purposes of this section, the date of such initial transfer of RECs shall be the date as indicated by PJM-EIS GATS or M-RETS that such transfer into Buyer’s PJM-EIS GATS or M-RETS account occurred (the “Date of Initial REC Delivery”). On the Date of Initial REC Delivery, Buyer will designate the immediately following: January 1st, April 1st, July 1st or October 1st as the Delivery Term Start Date. For example, if the Date of Initial REC Delivery is December 15, 2015 then the Delivery Term Start Date shall be January 1, 2016.

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- 2.2.2. **Delivery Term End Date.** The Delivery Term will end sixty (60) months after the Delivery Term Start Date (“Delivery Term End Date”). Buyer is not obligated to purchase any RECs Delivered to Buyer’s account after the Delivery Term End Date.
- 2.2.3. **Contract Quarter.** Each quarterly period of January through March, April through June, July through September, and October through December in the Delivery Term is a Contract Quarter.
- 2.3. **Deliveries Prior to Delivery Term.** Any RECs Delivered by Seller to Buyer’s PJM-EIS GATS or M-RETS account prior to the Delivery Term Start Date shall be deemed to be Delivered by Seller and received by Buyer at 12:00:00 a.m. Central Prevailing Time (“CPT”) on the Delivery Term Start Date.

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Article 3. System

- 3.1. **RECs only from System.** Buyer will only purchase RECs from the System that is or that will be identified in the System Identification Form. RECs that are not from the System or from a System that does not comply with the provisions in this Article 3 will not be accepted by Buyer.
- 3.2. **Forecast REC Quantity.** This Paragraph is only applicable to Systems that are or will be below 25 kW and to a Seller that receives an award for a Forecast REC Quantity, and specifies in the System Identification Form (Exhibit B) a non-zero Remaining Forecast REC Quantity. Such Seller agrees and warrants as follows:
- 3.2.1. Any System that will be identified under the term of this Agreement must be identified no later than the Guaranteed System Identification Date provided in Part 2 of the System Identification Form (Exhibit B) or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. Seller may request an extension of up to three (3) months for demonstrated project delays outside of Seller's reasonable project development control; that extension will be granted at Buyer's sole discretion, which shall be exercised reasonably.
- 3.2.2. Once a System is identified by Seller under the term of this Agreement, and no earlier than the Earliest System Identification Date:
- Seller shall notify the Buyer by providing an amended Part 2 of Exhibit B. Any such amended Part 2 of Exhibit B received prior to the Earliest System Identification Date shall be reviewed and processed by Buyer on or after the Earliest System Identification Date.
 - Seller and Buyer will execute an Additional Agreement as prepared by Buyer with terms identical to the terms of this Agreement and with the System described in the System Identification Form (Part 1 of Exhibit B), which shall specify a Maximum Contract Quantity.
 - Performance Assurance under this Agreement will be reduced by \$16 times the number of RECs in the Maximum Contract Quantity of the Additional Agreement. Performance Assurance under the Additional Agreement will be \$8 times the number of RECs in the Maximum Contract Quantity of the Additional Agreement. The resulting reduction in the aggregate amount of Performance Assurance across this Agreement and the Additional Agreement shall be returned in accordance with Section 9.2.
 - Seller shall have twelve (12) months from the Effective Date of the Additional Agreement for a particular System to be completely Installed, Energized and registered with PJM-EIS GATS or M-RETS.
- 3.2.3. The Maximum Contract Quantity for a system that is identified hereunder cannot exceed the Remaining Forecast REC Quantity.

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3.2.4. Any remaining Performance Assurance as indicated in Part 2 of the System Identification Form (Exhibit B) under this Agreement shall be forfeited on the Guaranteed System Identification Date or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. However, the Seller may request a refund of the remaining Performance Assurance up to an amount of \$480, which is an amount associated with up to thirty (30) RECs. Forfeiture of any remaining Performance Assurance under the terms of this Agreement shall be Buyer's sole remedy for Seller's failure to identify system(s) and to enter into Additional Agreements for such identified system(s) by the Guaranteed System Identification Date provided in Part 2 of the System Identification Form (Exhibit B) or any approved extension thereof.

3.3. **Description.** The System is as described in the System Identification Form.

3.4. **Installation Consistent with Description.** The System is required to have been Installed consistent with the description set forth in the System Identification Form.

3.5. **Installation by Qualified Person.** The System must have been Installed by a "Qualified Person" as set forth in section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)). The System if constructed in a manner inconsistent with this provision shall be deemed a material breach of this Agreement.

3.6. **Energized Date.** The Energized Date shall not be earlier than the Earliest Energized Date as indicated in the System Identification Form. The System must be completely Installed, ~~and~~ Energized ~~and registered with PJM EIS GATS or M RETS~~ by the Guaranteed Energized Date as set forth in the System Identification Form or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. Seller may request a six-month extension of the Guaranteed Energized Date upon demonstration of project delays that do not otherwise jeopardize the successful completion of the System; except as provided herein, any such extension will be granted at Buyer's sole discretion, which shall be exercised reasonably. Any such requests will be determined by Buyer on a case by case basis, but will be limited to circumstances outside Seller's control. Such circumstances may Notwithstanding the foregoing, Buyer shall approve an extension in the case of include delays due to Systems upgrades required by the utility, delays in approval of interconnection requests, issuing of permits, and other events driven by delays in third-party processes.

3.7. **Forfeiture of Performance Assurance.** The Performance Assurance associated with the System under this Agreement will be forfeited should a System not be completely Installed, ~~and~~ Energized ~~and registered with PJM EIS GATS or M RETS~~ by the Guaranteed Energized Date or any extension approved by the Buyer at its sole discretion, which shall be exercised reasonably. Forfeiture of the Performance Assurance shall be Buyer's sole remedy for failure of the System to be completely

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Installed, ~~and~~ Energized, ~~and registered with PJM-EIS GATS or M-RETS~~ by the Guaranteed Energized Date or any extension approved by the Buyer.

- 3.8. **Notification to Buyer of Energized Date and System Size.** Within twenty (20) Business Days after the System is Installed, Energized and registered with PJM-EIS GATS or M-RETS, Seller shall provide notice to Buyer of the Energized Date and Final System Size by providing to Buyer the completed System Energized Notification Form (Exhibit C) and any associated documentation required therein. If the System is Installed, Energized and registered with PJM-EIS GATS or M-RETS prior to the Effective Date of this Agreement, then Seller shall provide to Buyer the completed System Energized Notification Form (Exhibit C) and any associated documentation required therein within twenty (20) Business Days of the Effective Date of this Agreement. The System Energized Notification Form (Exhibit C) must be completed by Seller and accepted by Buyer prior to Seller's first REC Delivery.
- 3.9. **Final System Size.** The Final System Size shall be based on the System's as-built configuration as indicated by Seller in the System Energized Notification Form (Exhibit C). If the Final System Size differs from the Planned Installed Capacity as set forth in the System Identification Form:
- 3.9.1. Any increase that results in a Final System Size behind the customer's utility meter that exceeds 2,000 kW (DC rating) shall result in immediate and automatic termination of this Agreement.
- 3.9.2. Any increase or decrease that results in a Final System Size that is not within the greater of: $\pm 25\%$ or $\pm 5\text{kW}$, from the Planned Installed Capacity as set forth in the System Identification Form shall result in immediate and automatic termination of this Agreement.
- 3.9.3. Any increase or decrease in a Final System Size that results in a change in a Size Category as set forth in the System Identification Form shall result in immediate and automatic termination of this Agreement, provided that Buyer has not approved such change in Size Category pursuant to Seller's prior written request.
- 3.9.4. Any changes in size from the Planned Installed Capacity (a) that does not cause the Final System Size behind the customer's utility meter to exceed 2,000kW (DC rating), (b) that is within the greater of: $\pm 25\%$ or $\pm 5\text{kW}$ from the Planned Installed Capacity as set forth in the System Identification Form, and (c) that does not result in a change in Size Category as set forth in the System Identification Form, shall be deemed approved by Buyer.
- 3.9.5. ~~Notwithstanding any approved changes in size from the Planned Installed Capacity, T~~he Maximum Contract Quantity will ~~not~~ be adjusted and ~~will be~~ calculated based on the approved changes to the Final System SizePlanned

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~~Installed Capacity of the original System.~~

3.10. **Substitute System(s).** Prior to the System being Energized, Seller may request for one or more substitute systems to replace the System identified in this Agreement. Such a request must be made in writing to Buyer and is subject to the following conditions:

3.10.1. ~~Buyer shall approve of any such request, provided that the substitute system(s) meet all of the same requirements as the System(s) that are being replaced, as specified in Section 3.10.5 below. Approval of such requests is at the sole discretion of the Buyer, which shall be exercised reasonably.~~

3.10.2. The total size of the substitute system(s) in aggregate must be within the greater of: $\pm 25\%$ or ± 5 kW of the Planned Installed Capacity of the System being replaced.

3.10.3. Seller and Buyer will execute an Additional Agreement as prepared by Buyer with terms identical to the terms of this Agreement for each substitute system.

3.10.4. Buyer at its sole discretion, which shall be exercised reasonably, shall specify the amount designated as “Maximum Contract Quantity” in each Additional Agreement so that the amount in aggregate across such Additional Agreement(s) shall not exceed the Maximum Contract Quantity associated with the System that is being replaced.

3.10.5. The substitute system(s) must meet all the same requirements (e.g., use of “qualified person” for installation, qualifying as a “new” system, same Size Category, same development deadlines, not used to support prior awards) as the System that is being replaced.

3.11. Notwithstanding any size changes approved by Buyer, Buyer may retain the entire Performance Assurance for the System prior to the approval of the size change. If one or more Additional Agreement(s) are entered pursuant to Section 3.10.3, Buyer at its sole discretion, which shall be exercised reasonably, may allocate the amount of the Performance Assurance retained by Buyer across the Additional Agreement(s). The amount designated as Performance Assurance in each such Additional Agreement will be indicated in the System Identification Form of such Additional Agreement(s).

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Article 4. Prerequisites for Purchases

- 4.1. Buyer's obligation to begin the purchase of RECs from Seller at the rates of payment specified in the System Identification Form is contingent upon the satisfaction of all of the following conditions:
- 4.1.1. Buyer has accepted Seller's completed System Energized Notification Form (Exhibit C), which shall indicate that the System's Energized Date has occurred on or after the Earliest Energized Date as specified in the System Identification Form and no later than the Guaranteed Energized Date or any approved extension thereof;
 - 4.1.2. Seller has provided Buyer with a completed System Energized Notification Form (Exhibit C) and an Interconnection Agreement, Certificate of Completion, or comparable document serving as proof of an Interconnection Agreement so as to ensure that the System is located on the customer side of the customer's utility meter, is interconnected to the distribution system of the Interconnecting Utility, and has a fully executed Interconnection Agreement;
 - 4.1.3. Seller has provided to Buyer a completed System Energized Notification Form (Exhibit C) certifying that the System was "Installed" by a "Qualified Person" described in Section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i));
 - 4.1.4. Seller, at its sole cost and expense, has a valid account in PJM-EIS GATS or M-RETS for purposes of Delivering RECs to Buyer's PJM-EIS GATS or M-RETS account and the System is registered with PJM-EIS GATS or M-RETS;
 - 4.1.5. If the System owner is not the Host, Seller has provided to Buyer ~~a Host Acknowledgment in the form attached hereto as Appendix 3. Specifically, if the System owner is not the Host, Seller or the System owner has obtained and provided to Buyer the written acknowledgement by written evidence that y the Host acknowledging for Buyer's benefit that~~ the System owner has the right to locate the System at the Host's location, which may include, without limitation, the signature page of the contract between Seller and Host;
 - 4.1.6. Seller has rights to the RECs to be Delivered by Seller to Buyer's PJM-EIS GATS or M-RETS account and such rights include Seller's rights to Deliver and convey title of such RECs to Buyer such that, upon Delivery, all rights and ownership of Delivered RECs shall belong to Buyer;
 - 4.1.7. The Delivery Term Start Date has occurred; and

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- 4.1.8. The Illinois Commerce Commission Order authorizing Buyer to enter into this Agreement remains in full force and effect;
- 4.2. Seller's failure to satisfy Section 4.1.1 through Section 4.1.5 by the fortieth (40th) Business Day after the Guaranteed Energized Date (or any approved extension thereof) or Seller's failure to satisfy Section 4.1.6 by the Date of Initial REC Delivery shall entitle Buyer to retain the Performance Assurance associated with the System and to terminate this Agreement.

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Article 5. Purchase and Sale of RECs

5.1. Obligation to Purchase and Sell RECs

- 5.1.1. Beginning on the date of the satisfaction of all Article 4 pre-requisites, Seller shall sell and Deliver, and Buyer shall purchase and receive, RECs associated with the System up to the Maximum Contract Quantity of RECs, in accordance with the terms and conditions of this Agreement. Buyer shall be obligated to purchase only those RECs Delivered in accordance with the terms and conditions of this Agreement by Seller to Buyer during the Delivery Term.
 - 5.1.2. In addition to Seller's sale and Buyer's purchase of RECs, Buyer, without the payment of any additional consideration to Seller, shall receive title to, and Seller shall convey to Buyer, any and all other Environmental Attributes associated with the electricity generated by the System.
 - 5.1.3. Beginning from the Date of Initial REC Delivery through the Delivery Term End Date, Seller shall Deliver RECs associated with the System, up to the Maximum Contract Quantity, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such RECs to any person other than Buyer unless otherwise specifically provided herein. Seller shall not enter into any agreement or arrangement under which any person other than Buyer can claim such RECs from the Date of Initial REC Delivery through the Delivery Term End Date except as otherwise specifically provided herein.
 - 5.1.4. Seller shall comply with all PJM-EIS GATS or M-RETS rules, as applicable, to the creation and transfer of all RECs to be purchased by Buyer under this Agreement to the extent required for Buyer to obtain full rights and title of the RECs.
 - 5.1.5. Only RECs of the type of REC Product elected on the System Identification Form shall be eligible for Delivery by Seller and for purchase by Buyer in accordance with the provisions of this Agreement.
- 5.2. For purposes of clarification, Buyer shall not purchase, or take title to, any energy or capacity from the System under this Agreement.
 - 5.3. This Agreement shall not provide the basis for any preferential treatment for any other products or services between the Parties. This Agreement also makes no provision for net metering.

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- 5.4. Delivery shall be deemed to occur upon the completion of the transfer and receipt of RECs to Buyer's account within PJM-EIS GATS or M-RETS. Upon the completion of Delivery, all rights, title and interest in and to RECs will transfer to Buyer.

- 5.5. If the Seller uses PJM-EIS GATS for the tracking of RECs, then Seller shall include the price per REC on the certificate transfer form when transferring RECs to the Buyer. If Seller fails to include a price or include the correct price, Buyer will request that Seller withdraw the REC transfer and resubmit it with the price per REC included. If the Seller uses M-RETS, then such similar obligation will only apply should the analogous certificate transfer form change to include a price field at a future date during the Delivery Term. Buyer will inform Seller if M-RETS makes such a change. Notwithstanding any information contained on the certificate transfer form, the price per REC under this Agreement shall be that price indicated as the Purchase Price in the System Identification Form under this Agreement.

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Article 6. Metering; Interconnection

- 6.1. **Metering.** The System must be located behind the customer's utility meter of a distribution customer of the Interconnecting Utility indicated in the System Energized Notification Form (Exhibit C) and must have a Revenue Quality Meter so as to allow the System owner to have the ability to measure the output of the System. Such meter or separate meter dedicated to the measurement of the System's energy output for the determination of the quantity of RECs created shall be installed, operated, maintained and tested in accordance with Good Utility Practice, PJM-EIS GATS or M-RETS requirements, as applicable, and any other requirements and standards issued by the Interconnecting Utility and the Illinois Power Agency. Seller shall be responsible for the System to be in compliance with the terms and conditions of the Interconnecting Utility's tariff for all other metering required of the System. Seller shall be responsible or shall ensure the System owner is responsible for all costs associated with such metering consistent with all standards and requirements set forth by the Interconnecting Utility.
- 6.2. **Interconnection Agreement.** This Agreement does not provide for the interconnection of the System to the Interconnecting Utility's electric distribution system. Seller shall seek such interconnection service from the Interconnecting Utility in accordance with the Interconnecting Utility's applicable interconnection process. Seller shall comply with the terms and conditions of the Interconnection Agreement. Seller shall be responsible for all costs and expenses associated with the interconnection of the System consistent with all standards and requirements set forth by the Interconnecting Utility.

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Article 7. Quantity; Purchase Price

- 7.1. **Purchase Price.** RECs produced by the System and Delivered into the Buyer's PJM-EIS GATS or M-RETS account shall be purchased by Buyer at the Purchase Price indicated in the System Identification Form.
- 7.2. **Quantity.** During the Delivery Term, Seller shall sell and Deliver to Buyer, and Buyer shall purchase and accept Delivery of, the quantity of RECs produced by the System, up to, but not in excess of, the Maximum Contract Quantity of RECs indicated in the System Identification Form.
- 7.3. **Surplus RECs.** If during the Delivery Term, the System produces RECs in excess of the Maximum Contract Quantity, Buyer at its sole discretion may offer to purchase, but is under no obligation to offer to purchase, such excess up to the total of such excess RECs at the Purchase Price and Seller may accept such offer, but is under no obligation to sell such excess RECs to Buyer. Seller may offer to sell any RECs in excess of the Maximum Contract Quantity to persons other than Buyer. For avoidance of doubt, Buyer shall have no rights or title to RECs that are in excess of the Maximum Contract Quantity under this Agreement unless such RECs are sold to Buyer, and unless already sold to Buyer, Seller may sell or transfer RECs in excess of the Maximum Contract Quantity to other parties.

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Article 8. Billing and Payment

- 8.1. **Invoicing.** Seller must properly Deliver RECs to Buyer's PJM-EIS GATS or M-RETS account prior to invoicing. All Delivered RECs must conform to the requirements of Article 5. Seller may only submit one invoice per Contract Quarter under this Agreement. For Deliveries made in a given Contract Quarter, Seller must submit its invoice to Buyer for such Deliveries no later than the 20th day after the end of such Contract Quarter (i.e., April 20th, July 20th, October 20th and January 20th), or the next Business Day if such day is not a Business Day. Invoices must reference the Contract Number, the number of RECs Delivered, the Purchase Price and the amount due. A form of invoice is attached hereto as Appendix 4.
- 8.2. **Invoicing for RECs Delivered Prior to Delivery Term.** For purposes of invoicing, any RECs Delivered at or prior to 12:00:00 a.m. Central Prevailing Time ("CPT") on the Delivery Term Start Date in accordance with Section 2.3 may be included in an invoice submitted by Seller on or before the 20th day of the first Contract Quarter of the Delivery Term.
- 8.3. **Payment.** Buyer shall only make payment for RECs (a) that Delivered to Buyer's PJM-EIS GATS or M-RETS account, (b) that are from the System, and (c) that are invoiced by Seller in a timely manner as set forth in Section 8.1 above. Payment for any RECs Delivered in accordance with this Agreement shall be made by Buyer to Seller ~~as soon as practicable in accordance with the practice of the Illinois State Comptroller's Office~~ no later than 30 days following the date of invoice.
- 8.4. **Late Invoices.** Any untimely delivery of invoice by Seller may result in payment delays by Buyer. Additionally, if invoice is not received by Buyer by August 15th of a given year for RECs Delivered through June 30th of that year, then Seller may have to seek payment through the Illinois Court of Claims. 30 ILCS 105/25. Buyer will inform Seller if the invoice cannot be accepted and if a claim will need to be made.
- 8.5. **Late Payment.** Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 III. Adm. Code 900. This shall be Seller's sole remedy for late payments by the State. Provisions for the payment of interest shall be made pursuant to the State Prompt Payment Act (30 ILCS 540).
- 8.6. Buyer shall only retire RECs once payment has been made. If for any reason Buyer is unable to pay for RECs Delivered to it, Buyer will return those RECs to the Seller. In such occurrence, Buyer or Seller may terminate the Agreement ~~without further obligation to the other Party and Seller shall be entitled to a termination payment from Buyer equal to Seller's Cost of Cover.~~
- 8.7. Only whole (as opposed to fractional) RECs shall be considered eligible for payment under this Agreement.

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- 8.8. **Disputes.** If Buyer disputes the information indicated in Seller's invoice, Buyer shall so notify Seller in writing and any disputed amount shall be withheld by Buyer pending resolution of the dispute. If Seller disputes the amount paid to it by Buyer, Seller shall so notify the Buyer in writing. Neither Party shall have the right to challenge any invoice or to bring any court or administrative action of any kind questioning the propriety of any invoice after a period of twenty-four (24) months from the date the invoice was issued.
- 8.9. **Payment Method.** All payments shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party in the Cover Sheet.
- 8.10. **Netting and Setoff.** Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement and any other REC Purchase and Sale Agreement(s) between the Buyer and Seller, if any, may upon mutual agreement of the Parties be aggregated, and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the Party owed the difference between the amounts owed.
- 8.11. **Taxes.** Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the RECs or production of the RECs arising prior to Delivery. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. A tax shall not include any penalty or fines.
- 8.12. **Survival.** Any provision of this Agreement which imposes a payment obligation on Buyer shall survive the expiration of this Agreement.

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Article 9. Performance Assurance

9.1. **Provision of Performance Assurance.** Seller shall be required to post Performance Assurance in the amount as specified on the System Identification Form no later than fourteen (14) calendar days after the date of being notified of the decision by the Illinois Commerce Commission approving the results of the procurement event for which this Agreement is based. Seller's failure to provide said Performance Assurance as required may result in automatic termination of this Agreement and the forfeiture of any collateral associated with this Agreement previously posted by Seller.

9.1.1. If on the Effective Date of the Agreement, Performance Assurance held by Buyer exceeds the amount as specified on the System Identification Form, Buyer shall return the excess as soon as practicable in accordance with the practices of the Illinois State Comptroller's Office if such Performance Assurance is in the form of cash. If Performance Assurance is in the form of a Letter of Credit, then Buyer shall return the excess amount upon receipt of a Letter of Credit amendment for the reduced amount from Seller, or cancel the Letter of Credit upon receipt of a replacement Letter of Credit for the reduced amount.

9.2. **Return of Performance Assurance.** Unless otherwise specified, Performance Assurance shall be returned to Seller either: (i) ~~with the first payment for RECs from the System upon Seller's satisfaction of the conditions precedent set forth in Section 5.1,~~ or (ii) termination of this Agreement because the System was not constructed due to a Force Majeure Event, or (iii) termination of this Agreement due to an Event of Default by Buyer. For purposes of clarification, Buyer has no obligation to return Performance Assurance if the Agreement is terminated due to an Event of Default by Seller.

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Article 10. Covenants, Representations and Warranties

10.1. **Seller Covenants, Representations and Warranties.** On and as of the Effective Date, and upon Delivery, Seller hereby covenants, represents and warrants to Buyer as follows:

10.1.1. Seller has, and at all times during the Term of the Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder;

10.1.2. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action and does not violate any of the terms or conditions of Seller's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Seller;

10.1.3. There is no pending or (to Seller's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects Seller's ability to perform its obligations under this Agreement;

10.1.4. Seller is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

10.2. **Buyer Covenants, Representations and Warranties.** On and as of the Effective Date, Buyer hereby represents and warrants to Seller as follows:

10.2.1. Buyer has, and at all times during the Term of the Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder;

10.2.2. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action and does not violate any of the terms or conditions of Buyer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Buyer; and

10.2.3. There is no pending or (to Buyer's knowledge) threatened litigation or administrative proceeding that materially adversely affects Buyer's ability to perform its obligations under this Agreement.

10.3. **Additional Seller REC Covenants.** On, as of the Effective Date, and upon Delivery, Seller hereby represents and warrants to Buyer as follows:

10.3.1. At the time of Delivery, Seller shall have the right to convey title to any and all

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of the RECs Delivered to Buyer in accordance with this Agreement free and clear of any and all liens or other encumbrances or title defects and Seller further represents that any and all of the RECs is of the type of REC Product specified in the System Identification Form.

- 10.3.2. Upon each Delivery, Seller represents and warrants to Buyer that (a) Seller has sold and transferred the RECs once and only once exclusively to Buyer; (b) the RECs and any other Environmental Attributes sold hereunder have not expired and have not been, nor will be retired, claimed or represented as part of electricity output or sale, or used to satisfy any renewable energy or other carbon or renewable generation attributes obligations under Illinois law or in any other jurisdiction; and (c) that it has made no representation, in writing or otherwise, that any third-party has received, or has obtained any right to, such RECs that are inconsistent with the rights being acquired by Buyer hereunder.
- 10.3.3. Seller warrants that as of the Date of Initial REC Delivery and continuing through the Delivery Term End Date, the System is a “Distributed Renewable Energy Generation Device” as defined in the Illinois Power Agency Act (20 ILCS 3855/1-10) and was “Installed” by a “Qualified Person” as described in and required by Section 1-56(i) of the Illinois Power Agency Act (20 ILCS 3855/1-56(i)).
- 10.3.4. Seller covenants that it shall ensure that the System shall not change, as described in the System Identification Form, except as set forth in Article 3 or with the prior written consent of Buyer.

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Article 11. Assignment

- 11.1. **General Conditions on Assignments.** When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledger, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledger, or transferor from its obligations thereunder.
- 11.2. If this Agreement is associated with a System that is identified and described in the System Identification Form and not based on a Forecast REC Quantity, the successors and assignees pursuant to any assignment of this Agreement must ensure that the System shall not change, as described in the System Identification Form, except as set forth in Article 3 or with the prior written consent of Buyer.
- 11.3. **Assignments by Seller.**
- 11.3.1. Seller may make a request to Buyer for the transfer or assignment of Seller's rights and obligations under the Agreement to the "Transferee". Such request must name the Transferee, provide the relationship between Seller and Transferee (if any), and must provide all necessary documentation to show that Transferee meets all conditions specific to a Seller under this Agreement. Necessary documentation may also include an updated Cover Sheet and updated Appendix 1.1-Appendix 1.5, if applicable. Buyer may request additional information from Seller, and Buyer will have thirty (30) calendar days to provide consent or to notify Seller that Buyer rejects the assignment or transfer.
- 11.3.2. In its notice to Buyer, Seller may state that the assignment or transfer is for purposes of pledging or assigning the revenues under this Agreement to a lender or other financing party as security for the project financing or tax equity financing of the System, or to an affiliate of Seller. In such cases, consent shall be deemed automatic if Seller remains the counterparty to the Agreement.
- 11.3.3. Seller will be required to effect any necessary assignment or transfer in the event of bankruptcy or dissolution.
- 11.4. **Permitted Assignment by Buyer.** Buyer may assign this Agreement without Seller's consent if such assignment is to another Illinois State entity or governmental entity. Buyer may not otherwise assign this Agreement.

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11.5. **Prohibited Assignments.** Any purported assignment of this Agreement not in compliance with the provisions of this Article 11 shall be null and void.

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Article 12. Appropriation Approval

- 12.1. **Appropriation Approval.** Buyer shall on an annual basis seek an appropriation by the State of Illinois for the Renewable Energy Resources Fund sufficient to allow payment under this Agreement. If Buyer fails to receive such appropriation approval for a given fiscal year, Buyer shall notify Seller of such and Buyer may terminate or suspend this Agreement within thirty (30) calendar days after the date of such notification to Seller, and in no case shall Buyer enter into agreements for or make payment under agreements for similar products until and unless Buyer makes payment hereunder. Buyer must provide notice of such termination or suspension to Seller in accordance with the provisions of Article 14. If suspended, Seller may sell RECs from the System to another party during the suspended period. If terminated, neither Party shall have any further liability hereunder upon such termination.

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Article 13. Events of Default; Remedies

13.1. **Events of Default.** An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

13.1.1. if a Party materially breaches any or all of its **material** obligations as described in this Agreement and such breach is not cured within thirty (30) Business Days of written notice of such breach from the other Party;

13.1.2. if any representation or warranty or covenant made by a Party in Article 10 of this Agreement proves to have been **intentionally** misleading or false in any material respect when made; and/or

13.1.3. if a Party becomes Bankrupt.

13.2. **Additional Seller Events of Default.** An “Event of Default” shall also mean with respect to Seller the occurrence of any of the following:

13.2.1. if Seller fails to satisfy any and all of the conditions set forth in Section 4.1.1 through Section 4.1.5 by the fortieth (40th) Business Day after the Guaranteed Energized Date or any approved extension thereof; or,

13.2.2. if Seller fails to satisfy Section 4.1.6 by the Date of Initial REC Delivery; or,

13.2.3. for Systems that are Energized and registered with PJM-EIS GATS or M-RETS after the Effective Date of this Agreement, if Seller fails to Deliver any REC pursuant to this Agreement from the System to Buyer within 90 calendar days (or 180 calendar days if the Final System Size is equal to or less than 5kW) of when System is Energized and registered with PJM-EIS GATS or M-RETS, or any approved extension thereof; or

13.2.4. for Systems that are Energized and registered with PJM-EIS GATS or M-RETS on or prior to the Effective Date of this Agreement, if Seller fails to Deliver any REC pursuant to this Agreement from the System to Buyer within 90 calendar days (or 180 calendar days if the Final System Size is equal to or less than 5kW) of the Effective Date of this Agreement, or any approved extension thereof; or

13.2.5. if Seller fails to Deliver any RECs pursuant to this Agreement from the System **for reasons other than force majeure** for a consecutive period of six (6) months during the Delivery Term, unless extended by Buyer at its sole discretion, which shall be exercised reasonably.

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13.3. Remedies Upon Default.

13.3.1. **Remedies.** Upon the occurrence and continuation of an Event of Default, the other Party (the “Non Defaulting Party”) may (i) terminate this Agreement upon written notice to the Defaulting Party and/or (ii) exercise such remedies as provided in this Agreement. If the System has been Energized and registered with a PJM-EIS GATS or M-RETS, and the Agreement is terminated due to an Event of Default by Seller, then (a) the RECs to be Delivered to Buyer under this Agreement from System shall not be eligible to be considered for a contract award for RECs under any future Illinois Power Agency’s procurement event(s), and (b) Buyer shall withhold any payments due in respect of this Agreement, and (c) Seller shall forfeit its Performance Assurance under this Agreement if such Performance Assurance has not yet been returned to Seller or Seller shall pay to Buyer upon Buyer’s demand, an amount equal to \$8 per REC multiplied by the Maximum Contract Quantity under this Agreement. For avoidance of doubt, the foregoing shall be Buyer’s sole remedy for Seller’s default under the Agreement. Both Parties hereby stipulate that the remedies set forth in this Section 13.3.1 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such penalties.

13.3.2. **Suspension of Performance.** Notwithstanding any other provision hereof, if an Event of Default has occurred and is continuing, the Notifying Party may, on notice to the other Party, suspend performance of its obligation to Deliver and sell, or receive and purchase, as applicable, RECs until such Event of Default is cured; *provided, however*, that any suspension shall not extend the Delivery Term. Any such suspension shall be without prejudice to any remedy provided herein or otherwise available at law or in equity, including the right to subsequently terminate under Section 13.3.1.

13.3.3. Other Buyer Remedies.

(a) With respect to a Seller default because the System was not Energized ~~and registered with PJM-EIS GATS or M-RETS~~ as of the Guaranteed Energized Date, this Agreement shall terminate immediately, unless, prior to the Guaranteed Energized Date, Seller provides notice to Buyer of the potential Seller default, requests suspension of the termination of the Agreement, and such request has been approved by Buyer. If Seller provides such notice and such request has been approved by Buyer, Seller shall have a period as determined by Buyer, which shall not exceed six (6) months, to cure such Seller default. If Seller does not cure such Seller default by the expiration of such extension period as designated by Buyer, this Agreement shall terminate automatically.

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(b) With respect to a Seller default pursuant to Section 13.2.3, Section 13.2.4 or Section 13.2.5, Buyer shall have the right to terminate this Agreement without further liability on the part of Buyer, by giving Seller fifteen (15) Business Days' notice.

13.3.4 Other Seller Remedies. If Seller terminates this Agreement due to a default by Buyer, Seller shall be entitled to a termination payment from Buyer equal to Seller's Cost of Cover.

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Article 14. Notices and Contact Information

- 14.1. Notices and other communications provided for herein shall be given in writing by e-mail, by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals at the applicable address set forth in the Cover Sheet. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.
- 14.2. Any correspondence related to the Performance Assurance should be sent to the Performance Assurance contact at the applicable address set forth in the Cover Sheet.
- 14.3. The notice, contact or accounting information specified in the Cover Sheet and in this Article 14 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement. However, such written notice shall not be used for the purposes of Article 11.

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Article 15. Force Majeure

15.1. Force Majeure.

- 15.1.1. Except as otherwise set forth in this Agreement, neither Party shall be liable to the other Party for failure or delay in the performance of any obligation under this Agreement during the Term of the Agreement if and to the extent that such delay or failure is due to a Force Majeure Event. The Party claiming Force Majeure shall notify the other Party of the occurrence thereof as soon as possible and shall use reasonable efforts to resume performance immediately.
- 15.1.2. In no event shall a claim of Force Majeure or a Force Majeure Event operate to automatically extend the Guaranteed Energized Date set forth in the System Identification Form.
- 15.1.3. After the Delivery Term Start Date, in no event shall a claim of Force Majeure or a Force Majeure Event operate to extend the Delivery Term.
- 15.1.4. After the Delivery Term Start Date, in the event of (i) a Force Majeure Event of twelve (12) consecutive months duration, or (ii) Force Majeure Events cumulatively totaling twelve (12) months, in which Seller fails to Deliver any RECs from the System to Buyer, Buyer shall have the right to terminate this Agreement without further liability to Seller, by giving Seller fifteen (15) Business Days' written notice.

15.2. A "Force Majeure Event" means any cause beyond the reasonable control of, and not due to the fault or negligence of, the affected Party and which could not have been avoided by the affected Party's reasonable due diligence, including, without limitation, as applicable, war, terrorism, riots, embargo or national emergency; curtailment of or inability to obtain electric power transmission services or interconnection; fire, flood, windstorm, earthquake, or other acts of God; strikes, lockouts, or other labor disturbances (whether among employees of Seller, its suppliers, contractors, or others); delays, failure, and/or refusal of suppliers to supply materials or services; orders, acts or omissions of the PJM-EIS GATS Administrator or M-RETS Administrator, as applicable; orders or acts of any Governmental Authority; changes in laws or regulations; or any other cause of like or different kind, beyond the reasonable control of Seller. Notwithstanding the foregoing, a Force Majeure Event shall not be based on Seller's ability to sell RECs at a price greater than the Purchase Price, or Buyer's ability to purchase RECs at a price below the Purchase Price.

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Article 16. Liability

- 16.1. **Limitation of Liability.** With respect to any liability hereunder, neither Seller nor Buyer shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages, lost profits, or business interruption damages, whether by statute, in tort or in contract, under any indemnity provision or otherwise. Notwithstanding any other provisions of this Agreement, in no event shall Seller be liable to Buyer in an amount that exceeds \$8 per REC multiplied by the Maximum Contract Quantity, or in an amount that exceeds \$16 per REC multiplied by the Maximum Contract Quantity if this Agreement is based on a Forecast REC Quantity.
- 16.2. **No Assumption of Liability.** Buyer shall not assume, and Seller, if Seller is the System owner, shall retain and be responsible for, any and all liabilities and obligations of Seller of any kind or nature whatsoever with respect to the System, including, without limitation, any and all liabilities and obligations of Seller under Seller's Project Documents. "Project Documents" means this Agreement, the executed project development agreement or other agreement between Seller and a project developer evidencing a legally enforceable obligation to develop, design, procure, and install the System warranted to operate at the Host location for at least the Term of the Agreement, and, if Seller is a project developer, any applicable leases, easements, power purchase agreements between the project developer and Host and licenses evidencing project developer's rights of access and rights to develop, design, procure, install and operate a solar-powered photovoltaic generation system at the Host's location and warranted to operate at the Host's location for at least the Term of the Agreement.

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Article 17. Dispute Resolution

- 17.1. Except as otherwise expressly set forth herein, for any and all disputes or issues, the Parties shall refer to this Article 17. A Party must respond to the other Party's notice concerning a disputed issue within ten (10) Business Days of first notification unless otherwise specified in this Agreement.
- 17.2. Any Party may give the other Party notice of any dispute not resolved in the normal course of business ("Initial Notice"). Such Initial Notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, representatives of both Parties and, at the Parties' request, shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. Such a meeting may occur in person or by telecommunication. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 17.3. Any claim against Buyer arising out of this Agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1.

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Article 18. Miscellaneous

- 18.1. **Records.** The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least six (6) years such records as may be needed to afford a clear history of all Deliveries of RECs pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended. This section shall survive the expiration or termination of this Agreement.
- 18.2. **Audit Rights.** Seller and Buyer shall each have the right throughout the Term of the Agreement and for a period of six (6) years following the end of the Term of the Agreement, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the other Party or to determine a Party's compliance with the terms of this Agreement. If upon review, books and records indicate inconsistencies related to the information provided for the System, Buyer and its representatives shall have the right, but not the obligation, during business hours, upon reasonable notice to Seller, to visit and view the System site to the extent Seller has access to the site. The Party requesting the audit shall pay the other Party's reasonable costs allocable to such audit.
- 18.3. **Accounting Information.** Seller shall provide to Buyer, and in a timely fashion following its request, reasonably requested information that Buyer requires for its accounting analysis. Buyer agrees to treat any information that includes confidential information with the same degree of care that it accords its own confidential information.
- 18.4. **Forward Contract.** Purchaser and Seller each acknowledge that, for purposes of this Agreement, it is a "forward contract merchant" and that all transactions pursuant to this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code.
- 18.5. **Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement shall remain in full force and effect, and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided that the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.
- 18.6. **Entire Agreement.** This Agreement completely and fully supersedes all other understandings or agreements, both written and oral, including any term sheet or confirmation, between the Parties relating to the subject matter hereof.

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- 18.7. **Waiver.** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.
- 18.8. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law. Any dispute arising out of this Agreement shall be governed by Section 17.3 of this Agreement.
- 18.9. **Headings.** The article and section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.
- 18.10. **Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party, and any of said other Party's Affiliates, directors, officers, employees, agents and permitted assigns, from and against all third party claims, losses, injuries, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with, arising out of, or alleged to arise out of any event or circumstance first occurring or existing during the period when control and title to the products is vested in such Party or which is in any manner connected with the performance of this Agreement by such Party, except to the extent that such claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified. This indemnity shall survive the expiration or termination of this Agreement for the full statutory period allowable by applicable law.
- 18.11. **No Third Party Beneficiaries.** Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.
- 18.12. **Counterparts; Transmittal.** This Agreement may be executed in several counterparts, each of which is an original, and all of which constitute one and the same instrument. Electronic or digital transmission of this Agreement shall constitute good and valid delivery as long as the original executed document(s) are delivered by the transmitting party by hand delivery during office hours or by overnight delivery service within five (5) Business Days of such electronic or digital transmission.

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Appendices

Appendix 1 – Illinois State Requirements

Appendix 1.1 - Standard Terms and Conditions

Appendix 1.2 - Standard Certifications

Appendix 1.3 - Financial Disclosure and Conflicts of Interest

Appendix 1.4 - Disclosure of Business with Iran

Appendix 1.5 - Taxpayer Identification Number

Appendix 2 – Standard Letter of Credit

Appendix 3 – ~~Host Acknowledgement~~Reserved

Appendix 4 – Sample Invoice Form

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STATE OF ILLINOIS STANDARD BUSINESS TERMS AND CONDITIONS

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1. PAYMENT TERMS AND CONDITIONS:

- 1.1 Late Payment: Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State. Payment terms contained on Vendor's invoices shall have no force and effect.
- 1.2 Minority Contractor Initiative: Any Vendor awarded a contract under Section 20-10, 20-15, 20-25 or 20-30 of the Illinois Procurement Code (30 ILCS 500) of \$1,000 or more is required to pay a fee of \$15. The Comptroller shall deduct the fee from the first check issued to the Vendor under the contract and deposit the fee in the Comptroller's Administrative Fund. 15 ILCS 405/23.9.
- 1.3 Expenses: The State will not pay for supplies provided or services rendered, including related expenses, incurred prior to the execution of this contract by the Parties even if the effective date of the contract is prior to execution.
- 1.4 Prevailing Wage: As a condition of receiving payment Vendor must (i) be in compliance with the contract, (ii) pay its employees prevailing wages when required by law, (iii) pay its suppliers and subcontractors according to the terms of their respective contracts, and (iv) provide lien waivers to the State upon request. Examples of prevailing wage categories include public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services. The prevailing wages are revised by the Department of Labor and are available on the Department's official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting the Illinois Department of Labor to ensure understanding of prevailing wage requirements at 217-782-6206 or (<http://www.state.il.us/agency/idol/index.htm>).
- 1.5 Federal Funding: This contract may be partially or totally funded with Federal funds. If federal funds are expected to be used, then the percentage of the good/service paid using Federal funds and the total Federal funds expected to be used will be provided in the award notice.
- 1.6 Invoicing: By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of the contract, and the amount billed and expenses incurred are as allowed in the contract. Invoices for supplies purchased, services performed and expenses incurred through June 30 of any year must be submitted to the State no later than August 15 of that year; otherwise Vendor may have to seek payment through the Illinois Court of Claims. 30 ILCS 105/25. All invoices are subject to statutory offset. 30 ILCS 210.
 - 1.6.1 Vendor shall not bill for any taxes unless accompanied by proof that the State is subject to the tax. If necessary, Vendor may request the applicable Agency/University state tax exemption

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number and federal tax exemption information.

1.6.2 Vendor shall invoice at the completion of the contract unless invoicing is tied in the contract to milestones, deliverables, or other invoicing requirements agreed to in the contract.

2. **ASSIGNMENT:** This contract may not be assigned, transferred in whole or in part by Vendor without the prior written consent of the State.

3. **SUBCONTRACTING:** For purposes of this section, subcontractors are those specifically hired to perform all or part of the work covered by the contract. Vendor must receive prior written approval before use of any subcontractors in the performance of this contract. Vendor shall describe, in an attachment if not already provided, the names and addresses of all authorized subcontractors to be utilized by Vendor in the performance of this contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this contract. If required, Vendor shall provide a copy of any subcontracts within 15 days after execution of this contract. All subcontracts must include the same certifications that Vendor must make as a condition of this contract. Vendor shall include in each subcontract the subcontractor certifications as shown on the Standard Subcontractor Certification form available from the State. If at any time during the term of the Contract, Vendor adds or changes any subcontractors, then Vendor must promptly notify, by written amendment to the Contract, the State Purchasing Officer or the Chief Procurement Officer of the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to the Contract.

The "work covered by the contract" is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract. System owners, system installers, site owners, and others involved in the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic facility are not considered "subcontractors hire to perform all or part of the work covered by the contract."

4. **AUDIT/RETENTION OF RECORDS:** Vendor and its subcontractors shall maintain books and records relating to the performance of the contract or subcontract and necessary to support amounts charged to the State pursuant the contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, the Vendor and its subcontractors must retain its records for five years. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the procuring Agency/University, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and

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records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor's books and records. 30 ILCS 500/20-65.

5. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor's performance of this contract. Vendor shall continue to perform its obligations while any dispute concerning the contract is being resolved unless otherwise directed by the State.
6. **NO WAIVER OF RIGHTS:** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.
7. **RESERVED.**
8. **CONFIDENTIAL INFORMATION:** Each Party, including its agents and subcontractors, to this contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Vendor shall presume all information received from the State or to which it gains access pursuant to this contract is confidential. Vendor information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the contract, in whatever form it is maintained, promptly at the end of the contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third Party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.
9. **USE AND OWNERSHIP:** All work performed or supplies created by Vendor under this contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work for hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work, unless otherwise agreed in writing. Vendor hereby assigns to the State all right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Vendor acknowledges the State may use the work product for any purpose. Confidential data or information contained in such work shall be subject to confidentiality provisions of this contract.

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The "work performed" under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract. Documents, data, and goods related to the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system are not considered to be work performed under this contract to which the state would be granted rights.

10. **INDEMNIFICATION AND LIABILITY:** The Vendor shall indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of: (a) any breach or violation by Vendor of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss claimed to result in whole or in part from Vendor's negligent performance; or (c) any negligent act, activity or omission of Vendor or any of its employees, representatives, subcontractors or agents. Neither Party shall be liable for incidental, special, consequential or punitive damages.

"Performance" under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract.

11. **INSURANCE:** Vendor shall, at all time during the term and any renewals maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. Vendor shall provide: (a) General Commercial Liability occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.

12. **INDEPENDENT CONTRACTOR:** Vendor shall act as an independent contractor and not an agent or employee of, or joint venture with the State. All payments by the State shall be made on that basis.

13. **SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the State during the term of this contract to perform any work under this contract. Vendor shall give notice immediately to the Agency's director if Vendor solicits or intends to solicit State employees to perform any work under this contract.

"Performance" under this contract is the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract.

14. **COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all

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applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. Vendor shall obtain at its own expense, all licenses and permissions necessary for the performance of this contract.

15. **BACKGROUND CHECK:** Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks of Vendor's and subcontractors officers, employees or agents. Vendor or subcontractor shall reassign immediately any such individual who, in the opinion of the State, does not pass the background check.
16. **APPLICABLE LAW:** This contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois. The Department of Human Rights' Equal Opportunity requirements (44 Ill. Adm. Code 750) are incorporated by reference. Any claim against the State arising out of this contract must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. The State shall not enter into binding arbitration to resolve any contract dispute. The State of Illinois does not waive sovereign immunity by entering into this contract. The official text of cited statutes is incorporated by reference. An unofficial version can be viewed at (www.ilga.gov/legislation/ilcs/ilcs.asp).
17. **ANTI-TRUST ASSIGNMENT:** If Vendor does not pursue any claim or cause of action it has arising under federal or state antitrust laws relating to the subject matter of the contract, then upon request of the Illinois Attorney General, Vendor shall assign to the State rights, title and interest in and to the claim or cause of action.
18. **CONTRACTUAL AUTHORITY:** The Agency that signs for the State of Illinois shall be the only State entity responsible for performance and payment under the contract. When the Chief Procurement Officer or authorized designee signs in addition to an Agency, they do so as approving officer and shall have no liability to Vendor. When the Chief Procurement Officer or authorized designee, or State Purchasing Officer signs a master contract on behalf of State agencies, only the Agency that places an order with the Vendor shall have any liability to Vendor for that order.
19. **NOTICES:** Notices and other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the contract using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.
20. **MODIFICATIONS AND SURVIVAL:** Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive

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termination. In the event of a conflict between the State's and the Vendor's terms, conditions and attachments, the State's terms, conditions and attachments shall prevail.

21. **PERFORMANCE RECORD / SUSPENSION:** Upon request of the State, Vendor shall meet to discuss performance or provide contract performance updates to help ensure proper performance of the contract. The State may consider Vendor's performance under this contract and compliance with law and rule to determine whether to continue the contract, suspend Vendor from doing future business with the State for a specified period of time, or to determine whether Vendor can be considered responsible on specific future contract opportunities.

22. **FREEDOM OF INFORMATION ACT:** This contract and all related public records maintained by, provided to or required to be provided to the State are subject to the Illinois Freedom of Information Act (FOIA) (50 ILCS 140) notwithstanding any provision to the contrary that may be found in this contract.

23. **SCHEDULE OF WORK:** Any work performed on State premises shall be done during the hours designated by the State and performed in a manner that does not interfere with the State and its personnel.

24. **WARRANTIES FOR SUPPLIES AND SERVICES:**
 - 24.1. Vendor warrants that the supplies furnished under this contract will: (a) conform to the standards, specifications, drawing, samples or descriptions furnished by the State or furnished by the Vendor and agreed to by the State, including but not limited to all specifications attached as exhibits hereto; (b) be merchantable, of good quality and workmanship, and free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use; (c) comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies; (d) be of good title and be free and clear of all liens and encumbrances and; (e) not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the State for any losses, costs, damages or expenses, including without limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties.

 - 24.2. Vendor shall insure that all manufacturers' warranties are transferred to the State and shall provide a copy of the warranty. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the State's payment, acceptance, inspection or failure to inspect the supplies.

 - 24.3. Vendor warrants that all services will be performed to meet the requirements of the contract in an efficient and effective manner by trained and competent personnel. Vendor shall monitor

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performances of each individual and shall reassign immediately any individual who is not performing in accordance with the contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the contract or State policies.

The "supplies furnished" and "services" under this contract are limited to the transfer in title to, and electronic delivery of, renewable energy credits generated by the photovoltaic system identified in the contract Agency. Supplies and services related to the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system are not considered to be furnished or performed under this contract.

25. REPORTING, STATUS AND MONITORING SPECIFICATIONS:

25.1. Vendor shall immediately notify the State of any event that may have a material impact on Vendor's ability to perform the contract.

25.2. By August 31 of each year, Vendor shall report to the Agency or University the number of qualified veterans and certain ex-offenders hired during Vendor's last completed fiscal year. Vendor may be entitled to employment tax credit for hiring individuals in those groups. 35 ILCS 5/216, 5/217.

26. EMPLOYMENT TAX CREDIT: Vendors who hire qualified veterans and certain ex-offenders may be eligible for tax credits. 30 ILCS 500/45-67 and 45-70. Please contact the Illinois Department of Revenue (telephone #: 217-524-4772) for information about tax credits.

27. TERMINATION FOR CAUSE: The State may terminate this contract, in whole or in part, immediately upon notice to the Vendor if: (a) the State determines that the actions or inactions of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, safety, or property, or (b) the Vendor has notified the State that it is unable or unwilling to perform the contract.

27.1. If Vendor fails to perform to the State's satisfaction any material requirement of this contract, is in violation of a material provision of this contract, or the State determines that the Vendor lacks the financial resources to perform the contract, the State shall provide written notice to the Vendor to cure the problem identified within a specified period of time. If not cured by the specified date, the State may either: (a) immediately terminate the contract without additional written notice or (b) enforce the terms and conditions of the contract.

27.2. For termination due to any of the causes contained in this section, the State retains its right to seek any available legal or equitable remedies and damages.

28. TERMINATION FOR CONVENIENCE:

[SPV COMMENTER 1]

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- 28.1. This contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason. 30 ILCS 500/20-60.

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Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

System owners, system installers, site owners, and others involved in the manufacture, sale, installation, hosting, or maintenance of the identified photovoltaic system are not considered "subcontractors used on this contract."

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
 - the contract may be void by operation of law,
 - the State may void the contract, and
 - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
4. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies it he/she has not received (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.

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Appendix 1.2

5. Vendor certifies that it is a legal entity authorized to do business in Illinois prior to submission of a bid, offer, or proposal. 30 ILCS 500/1.15.8, 20-43.
6. RESERVED.
7. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
9. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false. 30 ILCS 500/50-10.5.
10. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e), *amended by Pub. Act No. 97-0895 (August 3, 2012)*.
11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt. 30 ILCS 500/50-11, 50-60.
12. RESERVED.
13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
14. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.

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15. Vendor certifies it is not in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
18. RESERVED.
19. Drug Free Workplace
 - 19.1. If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.
 - 19.2. If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.
20. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States. Department of Commerce. 30 ILCS 582.
21. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
22. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
23. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2.
24. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.

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25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor or any child under the age of 12. 30 ILCS 584.
26. Vendor certifies that any violation of the Lead Poisoning Prevention Act, as it applies to owners of residential buildings, has been mitigated. 410 ILCS 45.
27. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
28. RESERVED.
29. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

30. RESERVED.
31. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or offer. 30 ILCS 500/20-43. If you do not meet these criteria, then your bid or offer will be disqualified.

Vendor must make one of the following four certifications by checking the appropriate box. If C or D is checked, then Vendor must attach to this form the requested documentation.

- A. Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.

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- B. Vendor certifies that it is a legal entity, and was authorized to do business in Illinois as of the date for submitting this bid or offer. The State may require Vendor to provide evidence of compliance before award.
- C. Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.
- D. Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

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STATE OF ILLINOIS FINANCIAL DISCLOSURES AND CONFLICTS OF INTEREST

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Financial Disclosures and Conflicts of Interest forms (“forms”) must be accurately completed and submitted by the vendor, any parent entity(ies) and any subcontractors. There are **nine** steps to this form and each must be completed as instructed in the step heading, unless otherwise provided. A bid, offer, or proposal that does not include this form shall be considered non-responsive. The Agency/University will consider this form when evaluating the bid, offer, or proposal or awarding the contract.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the previously submitted form is no longer accurate, disclosing entities must provide an updated form.

Separate forms are required for the vendor, any parent entity(ies) and any subcontractors.

Subcontractor forms must be provided with a copy of the subcontract, if required, within 15 days after execution of the State contract or after execution of the subcontract, whichever is later, for all subcontracts with an annual value of more than \$50,000.

This disclosure is submitted for:

- Vendor
- Vendor’s Parent Entity(ies) (100% ownership)
- Subcontractor(s) >\$50,000
- Subcontractor’s Parent Entity(ies) > \$50,000

Project Name and Illinois Procurement Bulletin Number	Click here to enter text.
Vendor Name	Click here to enter text.
Doing Business As (DBA)	Click here to enter text.
Parent Entity	Click here to enter text.
Subcontractor	Click here to enter text.
Instrument of Ownership or Beneficial Interest	Choose an item. <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporate Stock (C-Corporation, S-Corporation, Professional Corporation, Service Corporation) <input type="checkbox"/> Limited Liability Company Membership Agreement (Series LLC, Low-Profit Limited Liability Partnership) <input type="checkbox"/> Partnership Agreement (General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Limited Partnership) <input type="checkbox"/> Not-for-Profit <input type="checkbox"/> Trust Agreement (Beneficiary) <input type="checkbox"/> Other If you selected Other, please describe: Click here to enter text.

STEP 1

SUPPORTING DOCUMENTATION SUBMITTAL

(All vendors complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

You must select one of the six options below and select the documentation you are submitting. You must provide the documentation the applicable section requires with this form.

Option 1 – Publicly Traded Entities

1.A. Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

1.B. Attach a copy of the Federal 10-K, and skip to Step 3.

Option 2 – Privately Held Entities with more than 200 Shareholders

2.A. Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

2.B. Complete Step 2, Option A for each qualifying individual or entity holding any ownership share in excess of 5% and attach the information Federal 10-K reporting companies are required to report under 17 CFR 229.401.

Option 3 – All other Privately Held Entities, not including Sole Proprietorships

3.A. Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

Option 4 – Foreign Entities

4.A. Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

4.B. Attach a copy of the Securities Exchange Commission Form 20-F or 40-F and skip to Step 3.

Option 5 – Not-for-Profit Entities

Complete Step 2, Option B.

Option 6 – Sole Proprietorships

Skip to Step 3.

STEP 2

DISCLOSURE OF FINANCIAL INTEREST OR BOARD OF DIRECTORS

(All vendors, except sole proprietorships, must complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Complete **either** Option A (for all entities other than not-for-profits) or Option B (for not-for-profits). Additional rows may be inserted into the tables or an attachment may be provided if needed.

OPTION A – Ownership Share and Distributive Income

Ownership Share – If you selected Option 1.A., 2.A., 2.B., 3.A., or 4.A. in Step 1, provide the name and address of each individual and their percentage of ownership if said percentage exceeds 5%, or the dollar value of their ownership if said dollar value exceeds \$106,447.20.

Check here if including an attachment with requested information in a format substantially similar to the format below.

TABLE – X			
Name	Address	Percentage of Ownership	\$ Value of Ownership

Distributive Income – If you selected Option 1.A., 2.A., 3.A., or 4.A. in Step 1, provide the name and address of each individual and their percentage of the disclosing vendor's total distributive income if said percentage exceeds 5% of the total distributive income of the disclosing entity, or the dollar value of their distributive income if said dollar value exceeds \$106,447.20.

Check here if including an attachment with requested information in a format substantially similar to the format below.

TABLE – Y			
Name	Address	% of Distributive Income	\$ Value of Distributive Income

Please certify that the following statements are true.

I have disclosed all individuals or entities that hold an ownership interest of greater than 5% or greater than \$106,447.20.

Yes No

I have disclosed all individuals or entities that were entitled to receive distributive income in an amount greater than \$106,447.20 or greater than 5% of the total distributive income of the disclosing entity.

Yes No

OPTION B – Disclosure of Board of Directors (Not-for-Profits)

If you selected Option 5 in Step 1, list members of your board of directors. Please include an attachment if necessary.

TABLE – Z	
Name	Address

STEP 3
DISCLOSURE OF LOBBYIST OR AGENT
 (Complete only if bid, offer, or contract has an annual value over \$25,000)
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Yes No. Is your company represented by or do you employ a lobbyist or other agent required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or other agent who is not identified through Step 2, Option A above and who has communicated, is communicating, or may communicate with any State/Public University officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.

Name	Address	Relationship to Disclosing Entity

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain an Agency/University contract:

STEP 4

PROHIBITED CONFLICTS OF INTEREST

(All vendors must complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided:

1. Do you hold or are you the spouse or minor child who holds an elective office in the State of Illinois or hold a seat in the General Assembly? Yes No
2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% (\$106,447.20) of the salary of the Governor? Yes No
3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority? Yes No
4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor? Yes No
5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor's total distributable income or an amount of distributable income in excess of the salary of the Governor (\$177,412.00)? Yes No
6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% (\$354,824.00) in the aggregate of the vendor's distributable income or an amount of distributable income in excess of two times the salary of the Governor? Yes No

STEP 5

POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS

(Complete only if bid, offer, or contract has an annual value over \$25,000)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided:

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services? Yes No
2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years? Yes No

3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois? Yes No
4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years? Yes No
5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that? Yes No
6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years? Yes No
7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government? Yes No
8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist? Yes No
9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? Yes No
10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? Yes No

STEP 6

EXPLANATION OF AFFIRMATIVE RESPONSES

(All vendors must complete regardless of annual bid, offer, or contract value)
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you answered "Yes" in Step 4 or Step 5, please provide on an additional page a detailed explanation that includes, but is not limited to the name, salary, State agency or university, and position title of each individual.

STEP 7
POTENTIAL CONFLICTS OF INTEREST RELATING TO
DEBARMENT & LEGAL PROCEEDINGS

(Complete only if bid, offer, or contract has an annual value over \$25,000)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

This step must be completed for each person disclosed in Step 2, Option A, Step 3, and for each entity and sole proprietor disclosed in Step 1.

Please provide the name of the person or entity for which responses are provided:

1. Within the previous ten years, have you had debarment from contracting with any governmental entity? Yes No
2. Within the previous ten years, have you had any professional licensure discipline? Yes No
3. Within the previous ten years, have you had any bankruptcies? Yes No
4. Within the previous ten years, have you had any adverse civil judgments and administrative findings? Yes No
5. Within the previous ten years, have you had any criminal felony convictions? Yes No

If you answered "Yes", please provide a detailed explanation that includes, but is not limited to the name, State agency or university, and position title of each individual.

STEP 8

DISCLOSURE OF CURRENT AND PENDING CONTRACTS

(Complete only if bid, offer, or contract has an annual value over \$25,000)

(Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you selected Option 1, 2, 3, 4, or 6 in Step 1, do you have any contracts, pending contracts, bids, proposals, or other ongoing procurement relationships with units of State of Illinois government? Yes No.

If "Yes", please specify below. Attach an additional page in the same format as provided below, if desired.

Agency/University	Project Title	Status	Value	Contract Reference/P.O./Illinois Procurement Bulletin #

Please explain the procurement relationship:

SIGN THE DISCLOSURE

(All vendors must complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

This disclosure is signed, and made under penalty of perjury for all for-profit entities, by an authorized officer or employee on behalf of the bidder or offeror pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code. This disclosure information is submitted on behalf of:

Name of Disclosing Entity:

Signature: _____

Date: _____, 20____

Printed Name:

Title:

Phone Number:

Email Address:

Contract No: _____

Posted: September 18, 2015

STATE OF ILLINOIS DISCLOSURE OF BUSINESS OPERATIONS WITH IRAN

Appendix 1.4

In accordance with 30 ILCS 500/50-36, each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 of the Illinois Procurement Code, shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:

- more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or
- the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran.

A bid, offer, or proposal that does not include this disclosure shall not be considered responsive. We may consider this disclosure when evaluating the bid, offer, or proposal or awarding the contract.

There are no business operations that must be disclosed to comply with the above cited law.

The following business operations are disclosed to comply with the above cited law:

Contract No: _____

Posted: September 18, 2015

STATE OF ILLINOIS TAXPAYER IDENTIFICATION NUMBER

Appendix 1.5

I certify that:

The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the D/B/A on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name:

Business Name:

Taxpayer Identification Number:

Social Security Number: or

Employer Identification Number:

Legal Status (check one):

- Individual
- Sole Proprietor
- Partnership
- Legal Services Corporation
- Tax-exempt
- Corporation providing or billing medical and/or health care services
- Corporation NOT providing or billing medical and/or health care services

- Governmental
- Nonresident alien
- Estate or trust
- Pharmacy (Non-Corp.)
- Pharmacy/Funeral Home/Cemetery (Corp.)
- Limited Liability Company
(select applicable tax classification)
 - D = disregarded entity
 - C = corporation
 - P = partnership

Signature of Authorized Representative: _____

Date: _____, 20____

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

Appendix 2

Form of Letter of Credit

IRREVOCABLE LETTER OF CREDIT NO. _____

ISSUE DATE: _____

EXPIRY DATE: _____

APPLICANT

[**Applicant Name**]

[**Applicant Address**]

BENEFICIARY

Illinois Power Agency
160 North LaSalle Street, Suite C-504
Chicago, Illinois 60601

ATTENTION: Mr. Anthony Star, Director

EXPIRY DATE: [*insert date*]

CURRENCY

AMOUNT

USD

\$ [*insert amount*]

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO: [_____] BY ORDER OF AND FOR THE ACCOUNT OF [*Applicant Name*], [*Applicant Address*] FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [_____] AND 00/100 UNITED STATES DOLLARS (USD[_____] AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON [**Name of Issuer**] (“ISSUER”) LOCATED AT [**Issuer Address**].

THIS LETTER OF CREDIT IS EFFECTIVE FROM [_____, 20[___]] AND SHALL EXPIRE ON [_____, ___] AT OUR COUNTERS, PROVIDED THAT THIS LETTER OF CREDIT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRY DATE, UNLESS

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRY DATE WE NOTIFY YOU BY REGISTERED MAIL RETURN RECEIPT REQUESTED OR COURIER (WITH DELIVERY CONFIRMED IN WRITING) THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD. UPON RECEIPT BY YOU OF SUCH NOTICE AND IF A SUBSTITUTE LETTER OF CREDIT IN FORM, SUBSTANCE AND AMOUNT ACCEPTABLE TO YOU IS NOT PROVIDED TO YOU BY OR ON BEHALF OF THE APPLICANT AT LEAST THIRTY (30) DAYS PRIOR TO THE THEN CURRENT EXPIRY DATE IN EFFECT AT THE TIME OF NOTICE, THEN YOU MAY DRAW DOWN THIS LETTER OF CREDIT UP TO THE AVAILABLE AMOUNT (i.e., ORIGINAL AMOUNT OF THIS LETTER OF CREDIT NOTED ABOVE REDUCED BY AMOUNT OF PRIOR PAID DRAWINGS).

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, IN THE FORM OF ANNEX 1 ATTACHED HERETO; AND
2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

PRESENTATION OF ANY DRAWING MAY BE MADE BY HAND-DELIVERY, EXPRESS COURIER, OR CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

[Issuer]

[Issuer's Address]

PH: [() -]

ATTENTION: []

DRAWINGS PRESENTED BY TELEFACSIMILE ("FAX") TO FAX NO.[] ARE ALSO ACCEPTABLE PROVIDED THAT SUCH FAX PRESENTATION IS MADE ON OR BEFORE THE EXPIRY DATE AND THE ORIGINAL DRAWING CERTIFICATES ARE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO THE ABOVE ADDRESS, BUT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFECTIVENESS OF THE FAX PRESENTATION.

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

IF A DRAWING IS MADE BY YOU HEREUNDER AT OR BEFORE 11:00 A.M., NEW YORK TIME, ON A BUSINESS DAY (AS HEREINAFTER DEFINED) IN CONFORMANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, PAYMENT SHALL BE MADE TO YOU IN IMMEDIATELY AVAILABLE FUNDS AT OR BEFORE 4:00 P.M., NEW YORK TIME, ON THE NEXT FOLLOWING BUSINESS DAY. IF A DRAWING IS MADE BY YOU HEREUNDER AFTER 11:00 A.M., NEW YORK TIME, ON A BUSINESS DAY IN CONFORMANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, PAYMENT SHALL BE MADE TO YOU IN IMMEDIATELY AVAILABLE FUNDS AT OR BEFORE 3:00 P.M., NEW YORK TIME, ON THE SECOND BUSINESS DAY THEREAFTER.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF THE ISSUER UNDER THIS LETTER OF CREDIT AND, AS A RESULT, THE ISSUER SHALL ALWAYS REMAIN LIABLE TO THE BENEFICIARY FOR THE FULL AMOUNT OF THIS LETTER OF CREDIT, NOTWITHSTANDING SAID BANKRUPTCY, RECEIVERSHIP, PETITION OR DISCHARGE - NOT TO EXCEED THE AVAILABLE AMOUNT OF THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WITH RESPECT TO THIS LETTER OF CREDIT WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THE AMOUNT WHICH MAY BE DRAWN BY YOU UNDER THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY UNREIMBURSED DRAWINGS HEREUNDER AT OUR COUNTERS.
5. ANY NUMBER OF PARTIAL DRAWINGS ARE PERMITTED FROM TIME TO TIME UNDER THIS LETTER OF CREDIT.

Contract No: _____

Posted: September 18, 2015

6. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISION(S) OF THE INTERNATIONAL STANDBY PRACTICES AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.

7. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.

8. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

9. NOTWITHSTANDING ANY PROVISION OF THIS LETTER OF CREDIT TO THE CONTRARY, SHOULD THIS LETTER OF CREDIT EXPIRE OR TERMINATE ON A DATE THAT THE ISSUER'S LOCATION IS CLOSED DUE TO AN INTERRUPTION OF THE ISSUER'S BUSINESS CAUSED BY AN ACT OF GOD, WEATHER-RELATED EVENT, RIOT, CIVIL COMMOTION, INSURRECTION, ACT OF TERRORISM, WAR, DECLARED OR UNDECLARED, OR ANY CAUSE BEYOND THE ISSUER'S CONTROL, THEN THE TERMS OF THIS LETTER OF CREDIT WILL AUTOMATICALLY BE EXTENDED FOR AN ADDITIONAL PERIOD EQUAL TO THE LENGTH OF THE INTERRUPTION OF THE ISSUER'S BUSINESS, WHICH ADDITIONAL PERIOD SHALL NOT BE LESS THAN TEN (10) BUSINESS DAYS OR IN ANY EVENT LONGER THAN THIRTY (30) CALENDAR DAYS, FOLLOWING THE DAY ON WHICH THE ISSUER RESUMES ITS BUSINESS AFTER THE CAUSE OF SUCH INTERRUPTION HAS BEEN REMOVED OR ELIMINATED, AND, AS A RESULT, ANY DRAWING ON THIS LETTER OF CREDIT WHICH COULD PROPERLY HAVE BEEN MADE, BUT FOR SUCH INTERRUPTION, SHALL BE PERMITTED DURING SUCH EXTENDED PERIOD.

AUTHORIZED SIGNATURE: _____

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

TITLE: _____

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES
TO:

[Issuer]

[Issuer Address]

PH: [() -]

ATTENTION: _____

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. _____

_____, 20__

To: (Bank)
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to the Letter of Credit No. _____, dated _____, 20__, the undersigned is entitled to make a drawing under the Letter of Credit in the amount of \$ _____, under the terms of the above-referenced Letter of Credit or inasmuch as there is an Event of Default under any Renewable Energy Credits Purchase and Sale Agreement between the Applicant and us or Applicant has failed to identify system(s) for the REC Forecast Quantity in accordance with Section 3.2.4 of any Renewable Energy Credits Purchase and Sale Agreement between the Applicant and us.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Illinois Power Agency

By _____

Name:

Title:

Date:

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

cc: _____(Applicant)

[SPV COMMENTER 1]

Contract No: _____

Posted: September 18, 2015

Appendix 3

Host's Acknowledgement and Certification Reserved

~~The undersigned is the owner of the premises at which, the System indicated in the Renewable Energy Credits Purchase and Sale Agreement (Contract No: _____) with the Illinois Power Agency (the "Agreement") will be developed at. The undersigned hereby acknowledges and certifies for the benefit of Illinois Power Agency as follows:~~

~~The undersigned consents to the construction, installation, operation and maintenance of System at the Host's premises at: [insert address]~~

~~Owner of the premises at which System resides ("Host"):~~

~~Host is an individual~~

~~Host Name: _____~~

~~Host is an entity~~

~~Name of entity: _____~~

~~Name of signatory: _____~~

~~Title of signatory: _____~~

~~By: _____~~

~~Signature~~

~~Date: _____, 20____~~

~~Name of System (optional): _____~~

