

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-15

Approving the selection of SunEdison and the Solar Power and Services Agreement between the Metropolitan Exposition Recreation Commission and SunEdison Origination 3, LLC for the purchase of electricity for a minimum 20 year term.

Whereas, in the public interest for the purpose of providing renewable energy purchase options for the Oregon Convention Center Operation, and;

Whereas, this agreement fits into the sustainable practices of the Oregon Convention Center and;

Whereas, staff has completed a thorough Request for Proposal process, interviewed and selected the most qualified respondent, and negotiated an agreement for the requested services to the satisfaction of both partners, and;

Whereas, the Commission has the authority to enter into contracts for the Oregon Convention Center, and;

Whereas, this project will have a positive impact on the budget of the Oregon Convention Center, and;

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission:

1. Approves the selection of SunEdison as the most responsive proposer to the Oregon Convention Center Solar Energy Project.
2. Delegates the authority to the MERC Interim General Manager to execute the Solar Power and Services Agreement in substantially the form attached as Exhibit A with SunEdison to design, finance, install, build, operate and maintain a 1.25 megawatt grid connected Photovoltaic System on the Southern portion of the roof of the Oregon Convention Center for the sale of electricity to the Oregon Convention Center for a minimum 20 year term.

Passed by the Commission on November 4, 2009.


Approved as to form:

Daniel B. Cooper, Metro Attorney

By:

Nathan A. Schwartz Sykes, Senior Attorney


Chair


Secretary/Treasurer

MERC STAFF REPORT

Agenda Item/Issue: Approval of Solar Power and Services Agreement with Sun Edison.

Resolution No. 09-15

Presented By: Jeffrey A. Blosser

Date: November 4, 2009

Background: As part of the Oregon Convention Center's sustainability program and continued review of reducing costs to the operation, a Request for Proposals went out April 10, 2009 to install solar panels and provide renewable energy to the Oregon Convention Center. Six proposals were received on April 5, 2009 and three companies were interviewed. The proposal addressed installation and operation of the system, costs to OCC for energy purchase, ability to finance this project, experience and meeting the timeline in the proposal. OCC/MERC solicited help from the City of Portland Planning and Sustainability Department and from Hoffman Construction to evaluate and interview potential respondents. The Evaluation Committee was unanimous in its selection of Sun Edison as the most responsive bidder. Contract negotiations began with Sun Edison in August of 2009 and have concluded with the Solar Power and Services Agreement that is attached.

Major aspects of the deal are as follows:

- **SunEdison is the owner of the system, providing all capital costs and will be selling electrical power to the OCC.
- **SunEdison is leasing the space through the cost of the power being purchased by OCC for a 20 year term.
- **OCC is getting a rate that is lower than currently being charged by Pacific Power with a guaranteed escalator per year.
- **MERC has the ability to purchase the system per the agreement if it so desires in the future.

Fiscal Impact: This project will provide OCC with a lower guaranteed electrical rate for 1.25 Megawatts of power over 20 years. This translates into an average saving of \$72,000 per year. All capital costs, construction, management and maintenance will be provided by Sun Edison, schedule of fees and savings are attached for your review.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve the Solar Power and Services Agreement with Sun Edison for the installation of 1.25 megawatt grid connected Photovoltaic system and to sell power through this Power Purchase Agreement to the Oregon Convention Center as outlined in the attached Agreement.

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement is made and entered into as of this ____ day of October, 2009 (the "Effective Date"), between SunEdison Origination3, LLC, a Delaware limited liability company ("Provider"), and Metropolitan Exposition Recreation Commission, a commission appointed by the regional elected body, Metro, with business offices located at 777 NE Martin Luther King, Jr. Blvd., Portland, OR 97232 ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of October __, 2009 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety, except as modified in Section 2 of these Special Conditions.

2. Modifications to General Conditions.

2.1 Section 3.1 of the General Conditions are modified to add the following sentence as the first sentence of the section:

Provider acknowledges that the System will be the first phase of a two-phase solar installation on the Premises. Provider agrees to use commercially reasonable efforts to design, engineer, and install the System in a manner that facilitates the second phase of Purchaser's solar installation.

2.2 The following provision is added as section 4.4 to the General Conditions:

4.4 System Monitoring. Provider shall provide Purchaser with an online portal and account that will allow Purchaser to monitor System production, performance, and environmental benefits data on a reasonably continuous basis. No later than 90 days following the Commercial Operation Date, Provider shall ensure that such online portal can be accessed and viewed on Purchaser's existing displays at the Premises, as set forth in Schedule VI as part of the promotional program described in Section 15.3(b).

2.3 The following provision is added as section 15.3(b) to the General Terms:

15.3 (b) Onsite Promotion. Provider shall collaborate with Purchaser to develop an onsite promotional program to publicize the System and Purchaser's solar program, including enabling the access of system production information on Purchaser's existing displays pursuant to Section 4.4 (the "Promotional Program"); provided, however, that Provider's collaboration and financial contribution to the eh Promotional Program shall be limited to \$75,000.

3. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

SUNEDISON ORINATION3, LLC

By: SUN EDISON LLC

By: _____
Name:
Title:
Date:

**METROPOLITAN EXPOSITION
RECREATION COMMISSION**

By: _____
Name:
Title:
Date

SCHEDULES

I. Schedule 1: Description of Premises and System

Solar System Premises: 777 NE Martin Luther King Jr. Blvd
Portland, OR 97232

Anticipated Rebate or Subsidy \$ 230,000
Solar System Size: 1,182 kW (DC)
Scope: Design and supply grid-interconnected, ground mounted or roof-top solar electric (PV) system.

Module: Sanyo 210 or equivalent

Inverter: IEEE 1547 qualified

II. Schedule 2 -- kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$0.0621	11	\$0.0827
2	\$0.0639	12	\$0.0850
3	\$0.0658	13	\$0.0875
4	\$0.0677	14	\$0.0901
5	\$0.0696	15	\$0.0927
6	\$0.0716	16	\$0.0954
7	\$0.0737	17	\$0.0981
8	\$0.0759	18	\$0.1010
9	\$0.0781	19	\$0.1039
10	\$0.0803	20	\$0.1069

[*Calculated based on the year 1 kWh Rate multiplied by 2.9% inflation factor each year.]

III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does not take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 st day following : (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does not include costs of removal)*
1*	\$ 7.09		
2	\$ 6.65		
3	\$ 5.69		
4	\$ 4.74		
5	\$ 4.33		
6	\$ 3.93		
7	\$ 2.81		
8	\$ 2.80		
9	\$ 2.79		
10	\$ 2.78		
11	\$ 2.77		
12	\$ 2.76		
13	\$ 2.75		
14	\$ 2.74		
15	\$ 2.73		
16	\$ 2.72		
17	\$ 2.68		
18	\$ 2.67		
19	\$ 2.66		
20	\$ 2.65		
		5 th Anniversary	\$ 3.43
		6 th Anniversary	\$ 2.31
		7 th Anniversary	\$ 2.30
		8 th Anniversary	\$ 2.29
		9 th Anniversary	\$ 2.28
		10 th Anniversary	\$ 2.27
		11 th Anniversary	\$ 2.26
		12 th Anniversary	\$ 2.25
		13 th Anniversary	\$ 2.24
		14 th Anniversary	\$ 2.23
		15 th Anniversary	\$ 2.22
		16 th Anniversary	\$ 2.18
		17 th Anniversary	\$ 2.17
		18 th Anniversary	\$ 2.16
		19 th Anniversary	\$ 2.15

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

IV. Schedule 4 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	1,275,168	11	1,218,920
2	1,268,792	12	1,206,761
3	1,262,448	13	1,200,727
4	1,256,136	14	1,194,724
5	1,249,255	15	1,188,750
6	1,243,606	16	1,182,806
7	1,237,388	17	1,176,892
8	1,231,201	18	1,171,008
9	1,225,045	19	1,165,153
10	1,128,920	20	1,159,327

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

V. Schedule 5 – Notice Information

Purchaser:

Executive Director
Oregon Convention Center
PO BOX 2746
Portland, Oregon 97208-2746
Tel. 503-731-7800
Fax 503-731-7870

With a copy to:

Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232
Tel. 503-797-1530
Fax 503-797-1792

Provider:

Service Manager
SunEdison Origination3, LLC
c/o Sun Edison LLC
12500 Baltimore Avenue
Beltsville, MD 20705
1-888-786-3347

With a copy to

General Counsel
12500 Baltimore Avenue
Beltsville, MD 20705-6375
Tel. (443) 909-7200
Fax (443) 909-7121

Financing Party:

[To be provided by Provider when known]

CONFIDENTIAL AND PROPRIETARY

GENERAL TERMS AND CONDITIONS OF
SOLAR POWER & SERVICES AGREEMENT

These General Terms and Conditions ("General Conditions") are dated as of ____ day of October, 2009 and are witnessed and acknowledged by SunEdison Origination³, LLC ("SunEdison") and the Metropolitan Exposition Recreation Commission ("Party B"), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into Solar Power & Services Agreements that may be entered into between SunEdison and Party B or between their respective affiliates. Except to the extent SunEdison or Party B becomes a party to a Solar Power & Purchase Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or Party B.

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means, the Solar Power & Services Agreement.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Confidential Information” has the meaning set forth in Section 15.1.

“Covenants, Conditions and Restrictions” or **“CCR”** means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3, Section 4.3(a) or Section 11.2.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete

the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means these Terms and Conditions.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Host” means Purchaser.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 of the Special Conditions.

“Liens” has the meaning set forth in Section 7.1(e).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees,

penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

"MERC" means the Metropolitan Exposition Recreation Commission, which is a commission appointed by the regional elected body, Metro.

"Option Price" has the meaning set forth in Section 2.3.

"Party" or "Parties" has the meaning set forth in the preamble to the Solar Power & Services Agreement.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Premises" means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of the Special Conditions.

"Provider" has the meaning set forth in the Special Conditions.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Provider Indemnified Parties" has the meaning set forth in Section 16.2.

"Purchase Date" means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

"Purchaser" has the meaning set forth in the Special Conditions.

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 16.1.

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Special Conditions and all other solar or renewable energy subsidies and incentives.

"Solar Insolation" or "Insolation" means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

"Solar Power & Services Agreement" means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) and these General Conditions (including the Exhibits attached hereto) to the extent incorporated therein.

"Solar Services" means the supply of electrical energy output from the System and any associated reductions in Purchaser's peak demand from its Local Electric Utility.

"Solar Services Payment" has the meaning set forth in Section 6.1.

"Special Conditions" means the Solar Power and Services Agreement, excluding these General Conditions.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"System" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance the requirements herein.

"Term" has the meaning set forth in Section 2.1.

"Transfer Time" has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and

words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, MERC may renew, at its option, the Agreement for an additional five (5) year term (a "Renewal Term"), with written notice of renewal to Provider at least one hundred and eighty (180) days prior to the expiration of the Initial Term or then applicable Renewal Term. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term." During any Renewal Term, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred and eighty (180) days' prior written notice to the other Party.

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser's payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider

shall specify the Option Price, and Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of the Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3 is equal to the Fair Market Value (as determined by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3. The cost of the appraisal shall be borne by Provider if the value is less than the value provided by the Provider.

2.5 Removal of System at Expiration. Subject to Purchaser's exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually

convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost including any reasonable attorney's fees for enforcing this provision.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Both parties agree that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(c) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it. Provider must provide proof of such financing within one hundred and eighty days of the effective date.

(e) Provider has not received a fully executed (i) license in the form of Exhibit A of these General Conditions from the owner of the Premises, and (ii) such other documentation as may be reasonably

requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term, provided that Purchaser shall not be obligated to incur out-of-pocket expenses in obtaining such documentation.

(f) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

(h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(i) There has been a material adverse change in Purchaser's credit-worthiness.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. Purchaser shall have the right to review and approve all construction plans including engineering evaluations of the impact of the System on (i) the structural integrity and strength of the roof of the Premises and (ii) the then current Local Electric Utility's equipment and service, such review and approval not to be unreasonably conditioned, delayed, or withheld. Installation will be scheduled in accordance with the Premises' events schedule. A formal project schedule is to be provided to MERC by the Provider prior to start of Installation Work and weekly thereafter until the Commercial Operation Date. Due to the nature of the public events facility industry, it may be necessary for the Provider to perform work before 8:00 a.m., after 5:00 pm and on the weekends. It will also be necessary for the Provider to work closely with Purchaser's Operations Manager identified in Schedule 5 of the Special Conditions and applicable building staff to coordinate day-to-day logistical requirements for the benefit of the Provider and to afford Purchaser's staff the necessary time to perform event or non-event

related functions. Provider will be responsible for all tools, equipment, and material necessary to perform the described work. Purchaser will provide Provider access to all areas as necessary to complete the work.

3.2 Approvals; Permits. Purchaser shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR provided that Provider is responsible for obtaining all necessary approvals or permits and any associated costs for such approvals and permits.

3.3 System Acceptance Testing

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

3.4 Diversity in Employment and Contracting

The Parties agree that Provider shall make good faith efforts to achieve diversity in both its employment and contracting opportunities. In accordance with Metro Code 2.04.100 full participation by minorities, women and emerging small businesses in public contracts is essential to the local economy.

To the extent that Provider seeks to hire individuals for positions with respect to the Agreement, Provider shall employ practices that ensure workforce diversity by advertising and outreach to ethnic minorities and women. These efforts shall include at least one of the following: advertising in employment opportunities in student newspapers, minority business publications, and attendance and job fairs that promote minorities and women. Such policies and practices shall be made available to MERC upon request.

Provider shall first consider the use of Oregon state-certified minority, women and emerging small businesses (MWESB) for all contracts and purchases related to performance of this Agreement. A list of qualified contractors is available from the Office of Minority Women and Emerging Small Business or by contacting the Metro Procurement Office at 503-797-1816. Only if qualified MWESB contractors and suppliers are not available or practicable upon terms and conditions that are directly competitive with qualified non-MWESB contractors and suppliers shall Provider purchase from or contract with a non-MWESB firm. Upon MERC's request, Provider shall report to MERC its use of MWESB contractors and suppliers.

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises. All metering shall be approved by the Local Electricity Utility if required by Oregon law.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation, or (ii) terminate the Agreement pursuant to Section 2.2. Purchaser shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Purchaser and Provider shall amend the Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing

Party in connection with the substitute Premises. If Purchaser is unable to obtain such consents and releases for a substitute Premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refiling the security interest of Provider's Financing Party in the System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of the roof of the Premises, which shall be as leak proof as it was prior to removal of System. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Solar Services, and Purchaser shall reimburse Provider for any lost revenue during any transfer or construction time period (the "Transfer Time"), including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Transfer Time. For the purpose of calculating Solar Services Payments and lost revenue for such Transfer Time, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation).

(b) Malfunctions and Emergencies.

(i) Malfunctions. Purchaser and Provider each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.

(ii) Emergencies. Provider and Purchaser each shall notify the other

Party upon the discovery of an emergency condition in the System. If an emergency condition exists, Provider shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner.

(iii) Personnel. For routine and emergency repairs, Purchaser shall contact Provider with contacts for each listed in attached Schedule 5 of the Special Conditions. Provider and Purchaser shall each designate personnel and establish procedures such that each Party may provide notice of emergency conditions, as contemplated in Section 4.2(b), requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

(c) Roof Repair and Other System Disruptions. In the event that (x) the owner or lessee of the Premises repairs the Premises' roof for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (y) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).

5. DELIVERY OF SOLAR SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the Solar Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of the Special Conditions, they represent a

package of services and benefits, including reduction in the Purchaser's peak demand from the Local Electric Utility.

5.2 Estimated Annual Production. The annual estimate of Solar Services with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set as forth in Schedule 4 of the Special Conditions.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of Solar Services does not include Environmental Attributes or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser, shall submit to SunEdison for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider. Provider will provide Purchaser with reasonable assistance with Leadership in Energy and Environmental Design ("LEED") certification requirements related to the existence and operation of the System on the Premise. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal

property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.5 System Maintenance. Provider's operation and maintenance of the System shall include the following services, performed by or for Provider on an annual basis, or more often as Provider deems necessary to ensure that the System operates to provide Solar Services on a reasonably continuous basis: (i) cleaning of solar modules; (ii) mechanical service of System, including inspection for cracked or damaged modules, loose or damaged wires, and loose conduit connectors; and (iii) electrical service of System, including verification of proper operation of inverter and inspection of all electrical connections. Provider shall monitor the System and respond to and correct any defaults or malfunctions within a commercially reasonable time.

5.6 Replacement of Photovoltaic Modules Due to Significant Technological Advances. If photovoltaic modules become commercially available for building applications that would result in a significant increase in technical performance of the System (e.g., an increase in electrical generation of greater than 50 percent over actual historical generation), and it is mutually advantageous for both the Parties to employ the new modules, then the Provider may replace the existing photovoltaic modules with the new higher efficiency modules as economically feasible and beneficial for both Parties.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. In the event that Host is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser may terminate this Agreement upon notice in writing to Provider in

accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within fifteen (15) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and

released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Subject to the approval of MERC, Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider a commercial license coterminous with the Term, containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. The cost of such commercial license is included in the kWh rate charged to Purchaser under this Agreement.

(i) Purchaser hereby covenants that (x) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (y) except in the event of an emergency situation where persons and/or property are in eminent physical danger, neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal. Except in the event of an emergency, Provider will provide 48 hour notice to the Purchaser prior to its employees accessing Purchaser's property.

(ii) If Purchaser is a lessee of the Premises, Purchaser further covenants that it shall deliver to Provider, a license from Purchaser's landlord in substantially the form attached hereto as Exhibit A of these General Conditions.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement,

including a specified location, for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Sunlight Easements. Purchaser will use commercially reasonable efforts to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System, including but not limited to such actions as may be reasonably necessary to obtain a solar access easement for such purpose.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations — and — warranties — contained — in — the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a

default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein.

(c) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 4.1, AND 7.1 AND THIS SECTION 8, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." PURCHASER ACKNOWLEDGES THAT ALL EQUIPMENT, MANUFACTURER, AND OTHER WARRANTIES ASSOCIATED WITH THE SYSTEM OR ITS COMPONENTS ARE SOLELY FOR THE BENEFIT OF PROVIDER AND/OR THE FINANCING PARTY AS THE OWNER OR OPERATOR OF THE SYSTEM. NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER

MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Solar Services to Purchaser (other than income taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of a Party or its subcontractors or as a result of such party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities

related to the Agreement; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2, and (B) Provider may exercise any other remedy it may have at law or equity or under the Agreement.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof.

12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement claims and (iii) any obligation of Purchaser to pay Solar Service Payments or the Early Termination Fee.

13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider; (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed

delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation.

(a) If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the

receiving Party's need for it has expired or upon the request of the disclosing Party.

(b) Provider acknowledges that Purchaser is a "public body" as defined by Oregon Revised Statutes section 192.410, subject to the provisions of Title 19, Chapter 192 of the Oregon Revised Statutes ("Public Records Policy"). To the extent that anything in this Article 15 conflicts with Purchaser's duties under the Public Records Policy, the Public Records Policy shall prevail; provided, however, that if Purchaser receives a request for the disclosure of Provider's Confidential Information, Purchaser shall make commercially reasonable efforts to promptly notify Provider of such request and provide Provider with an opportunity to contest the disclosure.

15.2 Permitted Disclosures.

Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity.

(a) Mutual Right of Approval. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either

Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's licensed use of the property, negligence or willful misconduct or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations or Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the sole

negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to Section 12, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Purchaser's willful misconduct. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

17. INSURANCE.

17.1 Generally. Purchaser and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) automobile insurance with commercially reasonable coverages and limits. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance

Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Integration: Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Provider to enforce its rights against Purchaser under this Agreement.

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Oregon. The Parties agree that the courts of the State of Oregon and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

18.9 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.13 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by

execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.14 Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of the Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of the Agreement, except as expressly excluded in the Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

18.15 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

[Remainder of page intentionally left blank.]

These General Terms and Conditions are witnessed and acknowledged by SunEdison and Party B below. For the avoidance of doubt, neither SunEdison nor Party B shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

"SUNEDISON": SUNEDISON ORIGINATION3, LLC

By: _____

Name: _____

Title: _____

Date: _____

"PARTY B":

MEXPOSITION RECREATION COMMISSION

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
of General Conditions

[PURCHASER'S LETTERHEAD]

[Landlord's Address]

Attn: Authorized Representative

Re: Proposed Solar Power Installation at [Address of Premises]

Lease dated [] between [PURCHASER] and [LANDLORD] (the "Lease")

Dear Authorized Representative:

As has been discussed with you, [PURCHASER] and an affiliate of SunEdison Origination____, LLC ("SunEdison") have entered into a Solar Power & Services Agreement, pursuant to which SunEdison will install, finance, operate, and maintain a solar photovoltaic system at the above-referenced premises which [PURCHASER] leases from you pursuant to the Lease. By signing below and returning this letter to us, you confirm that:

1. The solar photovoltaic system and the renewable energy (including environmental credits and related attributes) produced by the system are personal property, and shall not be considered the property (personal or otherwise) of [LANDLORD] upon installation of the system at the premises.
2. SunEdison or its designee (including finance providers) shall have the right without cost to access the premises in order to install, operate, inspect, maintain, and remove the solar photovoltaic system. [LANDLORD] will not charge Purchaser or Provider any rent for such right to access the premises.
3. [LANDLORD] has been advised that the finance providers for the solar photovoltaic system have a first priority perfected security interest in the system. SunEdison and the finance providers for the solar photovoltaic system (including any system lessor or other lender) are intended beneficiaries of [LANDLORD]'s agreements in this letter.
4. [LANDLORD] will not take any action inconsistent with the foregoing.

We thank you for your consideration of this opportunity and we look forward to working with you in our environmental campaign to increase the utilization of clean, renewal energy resources.

Very truly yours,

[PURCHASER]

By: _____

Name:

Title: Authorized Representative

Acknowledged and agreed by:

[LANDLORD]

By: _____

Name:

Title: Authorized Representative

Exhibit B
of General Conditions

Certain Agreements for the Benefit of the Financing Parties

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Host's default. the Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

(d) **Right to Cure.**

i. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The

Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.
