Agenda Date: 8/12/26
Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

REVENUE AND RATES

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF ENERGY SERVICES AGREEMENT BY AND BETWEEN MIDDLESEX COUNTY AND MCS MICROGRID, LLC, A WHOLLY OWNED AFFILIATE OF DCO ENERGY, LLC PURSUANT TO N.J.S.A. 40A:11-15(1)(C)	)	DECISION AND ORDER APPROVING ENERGY SERVICE AGREEMENT DOCKET NO. EO26040125

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Thomas F. Kelso, Esq., Counsel, on behalf of Middlesex County

BY THE BOARD:

On April 17, 2026, pursuant to N.J.S.A. 40A:11-15(1)(c), Middlesex County ("County" or "Petitioner") filed an application for approval of an Energy Services Agreement ("Agreement") between the County and MCS Microgrid, LLC ("MCS") related to a cogeneration facility that will service the Community, Innovation and Opportunity project ("CIO Project") on the campus of Middlesex College ("Petition"). By this Order, the Board considers the Petition.

BACKGROUND

On August 21, 2025, the County entered into a Letter of Intent with DCO Energy, LLC, the parent company of MCS, to build a sustainable microgrid, which will provide electrical power as well as heating and cooling to all or parts of the Middlesex College campus and Edison Park. The proposed CIO Project would be designed, constructed and operated as an onsite co-generation and renewable microgrid, known as the "Middlesex Sustainable Microgrid" ("Microgrid"). Pursuant to the Agreement, the Microgrid will provide electricity, cooling and heating for the benefit of both the County, Middlesex College, and a magnet school. On April 2, 2026, County authorized the execution of the Agreement by Resolution #26-397-R subject to review and approval of the Office of the State Comptroller and the Board.

PETITION

According to the Petition, the County is seeking approval of a cogeneration facility that is required because the current service provided by the County's local public utility is inadequate to satisfy the anticipated increased energy needs of the County and the substation does not have the capacity to provide such increased energy needs. The production of the Microgrid will incorporate existing solar power on the campus and will allow additional megawatts of solar power. According to the Petitioner, the plan for the Microgrid is to reduce the burden of growth on the utility grid, address high utility costs, and increase energy reliability for the County. By the Agreement, MCS agrees to supply the County with Energy Services to the Premises for an initial term of twenty-five (25) years, plus one (1) five (5)-year extension, for a possible term of up to thirty (30) years.

On July 28, 2026, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments on the Petition. By its comments, Rate Counsel stated that it does not believe there will be any impact on PSE&G ratepayers because the County must maintain its electric supply with PSE&G. However, Rate Counsel expressed concern regarding potential rate impact or the use of ratepayer contribution that may result from the installation of the natural gas line for the Central Energy Center.

Rate Counsel acknowledged that assurances were provided to the parties that ratepayer contribution has not been sought, and that the cost of the natural gas main extension line would be offset by the obligation to purchase a minimum level of natural gas over a specified term. While Rate Counsel reserved the right to review any ratepayer-funded recovery requested by Elizabethtown Gas Company in connection with the natural gas extension which will be constructed for the Central Energy Center at Middlesex College, it does not oppose approval of the Agreement.

DISCUSSION AND FINDINGS

The Board, after careful review of the record in this matter, including the Petition, the Agreement, and supporting exhibits, pursuant to N.J.S.A. 40A:11-15(1)(c), **HEREBY FINDS** the Agreement will have a financial impact that is consistent with the purposes of N.J.S.A. 40A:11-15(1)(c).

The Board acknowledges Rate Counsel's comments and concerns regarding potential impacts to ETG ratepayers. The Board **NOTES** that the parties were provided assurances that ratepayer contributions were not sought and that the cost of any natural gas main extension line would be offset by minimum purchase obligations. Accordingly, the Board **HEREBY APPROVES** the attached Agreement effective September 1, 2026, subject to the condition that approval of the Agreement does not affect Rate Counsel's and Board Staff's right to review any future main extension costs that ETG may seek recovery of.

A copy of the Agreement is attached to this Order.

This Order shall be effective August 19, 2026.

DATED: August 12, 2026

BOARD OF PUBLIC UTILITIES
BY:

BEN HERTZ-SHARGEL
PRESIDENT

CHRISTINE GUHL-SADOVY
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

EMMA REBHORN
COMMISSIONER

JOSEPH COVIELLO
COMMISSIONER

ATTEST:

SHERRI L. LEWIS
BOARD SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF ENERGY SERVICES AGREEMENT BY AND BETWEEN MIDDLESEX COUNTY AND MCS MICROGRID, LLC, A WHOLLY OWNED AFFILIATE OF DCO ENERGY, LLC PURSUANT TO N.J.S.A. 40A:11-15(1)(C)

BPU DOCKET NO. EO26040125

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ENERGY SERVICES AGREEMENT

BETWEEN

MIDDLESEX COUNTY
"BUYER"

AND

MCS MICROGRID, LLC
"SELLER"

April __, 2026

ENERGY SERVICES AGREEMENT

This **ENERGY SERVICES AGREEMENT (**the "Agreement") made this __ day of April, 2026 is between the County of Middlesex, NJ ("Buyer"), and MCS Microgrid, LLC, a New Jersey limited liability company ("Seller"). Seller and Buyer are sometimes collectively referred to as "Parties" or singularly as a "Party."

WITNESSETH

WHEREAS, Buyer is executing its Community Innovation and Opportunity (CIO) Strategic Investment Plan which includes the construction of new facilities, including a multipurpose community venue, a student center and a magnet school, on the Middlesex College Campus and in the surrounding area, including the adjacent property owned by Buyer commonly known as Edison Park (the "CIO Plan");

WHEREAS, the CIO Plan is currently in progress and construction has commenced;

WHEREAS, during construction Buyer has been advised by its local public utility, PSE&G, that as a result of the growth related to the CIO Plan implementation, the existing college substation will exceed its capacity and the current service provided by PSE&G is inadequate to satisfy the anticipated increased energy needs of the identified CIO Plan and the college substation does not have the capacity to provide such increased energy needs. Furthermore, in order to provide sufficient electric power to the CIO Plan to meet the anticipated increased demand, PSE&G would need to expand its infrastructure requiring the Buyer to provide an upfront payment of millions of dollars and PSE&G could not guarantee that adequate energy services would be available to meet the estimated project completion schedule in 2026;

WHEREAS, as a direct result of these unexpected challenges with PSE&G, Buyer and Seller entered into discussions regarding an alternative energy solution to ensure that adequate energy services would be available upon completion of the construction of the CIO Plan;

WHEREAS, the Seller has provided the Buyer with a timely and cost-effective comprehensive energy project solution that would be designed, constructed and operated as an onsite co-generation and renewable microgrid (the "Middlesex Sustainable Microgrid") addressing the electric needs identified while including additional thermal services and renewable resources such as an integral solar energy component;

WHEREAS, Seller has agreed to deliver the Middlesex Sustainable Microgrid to Buyer that would require no upfront capital cost from the Buyer with development, construction and operation executed in parallel with the execution of the CIO Plan;

WHEREAS, in reliance on the skill and expertise of the Seller its affiliates and subcontractors, Buyer has chosen Seller to design, finance, build, own, operate and maintain a state-of-the-art Central Energy Center (as defined below) providing electric generation, thermal energy production, sources of renewable energy production, such as solar and the necessary distribution infrastructure to provide the energy services. The Parties will execute and deliver the Project Documents (as defined herein), upon mutually acceptable terms and conditions to complete the Middlesex Sustainable Microgrid Project (as defined herein), which include:

a) a Sublease (the "Sublease"), dated as of the date hereof, between Buyer and Seller, pursuant to which Buyer will sublease the Leased Premises (as defined herein) for the construction of the Central Energy Center;
b) Easements, granting rights of way and rights of access for the maintenance and installation of the electric and thermal distribution systems at various locations as shown in the plan attached to Schedule 15 (Sublease); and
c) this Energy Services Agreement.

WHEREAS, the Parties entered into a Letter of Intent (the "LOI"), dated September 15, 2025, which LOI will be replaced in its entirety by the terms set forth in this Energy Services Agreement (ESA) and the other Project Documents; and

WHEREAS, Seller shall own, operate and maintain Seller's Systems for the three buildings identified in this Energy Services Agreement and the schedules attached hereto, which includes the Central Energy Center and the Energy Distribution Systems, for purposes of providing approximately 6 MW of gross electrical generation, 21 MMBtu per hour of hot water capacity and 1,200 tons of chilled water capacity (collectively, the "Energy Services") to Buyer, which Buyer has agreed to receive and purchase from Seller, in accordance with the terms and conditions set forth herein and in the Project Documents.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the terms and conditions hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS; SCHEDULES; RULES OF CONSTRUCTION

1.01 Definitions. As used herein (including in the preamble and Recitals), the following terms have the meanings set forth below and in the Schedules:

"Actual Baseline Cost" [to be provided before execution].

"Aesthetic Components" means the components or attributes of Seller's System that are visible to, or otherwise perceptible by (for example, color, height, size), persons outside of the Central Energy Center building enclosure.

"Affiliate" means, as applied to any Person, any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Agreement" means this Energy Services Agreement, as it may be amended from time to time, including all referenced Schedules.

"Air Permit" means the air pollution control Operating Permit pursuant to provisions of a Minor NSR Permit issued by the State of New Jersey – NJDEP regulating the emissions of Seller's Emitting Equipment and designating Seller as the "operator," and any amendment and modification thereto during the Term.

"Air Permit Application" means the EPA Federal Minor New Source Review Application for New Construction Application ID# [ ] submitted to the EPA.

"Applicable Laws" means any law, rule, regulation, ordinance, order, code, judgment, decree, injunction, permit or similar form of decision of any Governmental Authority having jurisdiction over the matter in question.

"Article" means an Article of this Agreement.

"Asbestos Containing Materials" means any material with more than one percent (1%) asbestos, according to the standards established by the United States Occupational Health and Safety Administration.

"Bankruptcy" means, with respect to a Person: (i) such Person makes a general assignment for the benefit of creditors or admits, in writing in any legal proceeding, its insolvency or its inability to pay its debts as they become due; (ii) such Person files a voluntary petition under the Bankruptcy Code, (iii) the filing of an involuntary petition against such Person under the Bankruptcy Code by any other Person in which such Person colludes with or otherwise assists such Person, and/or such Person solicits or causes to be solicited petitioning creditors for any such involuntary petition; (iv) such Person files and answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it by any other Person under the Bankruptcy Code;; (v) such Person or any Affiliate consents to, or acquiesces in, or joins in, an application for the appointment of a custodian, receiver, trustee or examiner for such Person; (vi) within ninety (90) Days after the commencement of any proceeding against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future Applicable Law, such proceeding has not been dismissed; or (vii) within ninety (90) Days after the appointment, without the consent or acquiescence of such Person, of any trustee, receiver, custodian, assignee, liquidator or other similar official of such Person for all or any substantial part of such Person's properties, such appointment has not been vacated or stayed on appeal or otherwise, or if within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights.

"Beneficial Use Energy Services" or "Beneficial Use" shall have the meaning set forth in Section 6.01.

"Billing Month" means each calendar Month, or portion thereof, commencing on the delivery of Energy Services for Beneficial Use, or not later than Final Facility Acceptance and continuing until the end of the Term.

"Business Day" means any Day that is not a Saturday, Sunday or legal holiday under New Jersey State or Federal law or any other day reasonably designated by Buyer as a holiday annually.

"Buyer" means the County of Middlesex, a body politic and corporate of the state of New Jersey, for itself and/or on behalf of Middlesex College, having its principal offices at 75 Bayard Street, New Brunswick, New Jersey.

"Buyer's Commercial Operation Date" means the date when the buildings being connected to the Energy Distribution Systems will be ready to take energy services.

"Buyer's Electrical Interconnection Equipment" means equipment owned by Buyer that receives Electricity at the Delivery Point, as set forth on Schedule 3.

"Buyer's Electric Load" means at any given time the total amount of electricity necessary to serve the full electricity requirements of Buyer. This load shall be satisfied primarily by the electricity produced by Seller's System with supplemental electricity, when needed or as required, being supplied by PSE&G.

"Buyer's Emitting Equipment" means any equipment other than Seller's Emitting Equipment that is included or will be included in the Air Permit.

"Buyer's Engineer" means the engineer designated by Buyer pursuant to Section 3.04(g). Buyer may change the identity of its designated engineer by written notice given to Seller in accordance with Article XX.

"Buyer's Equipment" or "Buyer's Energy Related Equipment" means Buyer's Electrical Interconnection Equipment, Buyer's Thermal Interconnection Equipment, Buyer's emergency generators, and additional equipment that is owned by Buyer but will be operated and maintained by Seller, as limited and set forth in Schedule 3, during the Term.

"Buyer's Facility" or "Buyer's Facilities" means the locations on the Project Site that will be receiving thermal and electric services as set forth on Schedule 2 and Schedule 6, as they may be amended from time to time, and in accordance with Schedule 15.

"Buyer's Indemnitees" has the meaning provided in Section 17.02.

"Buyer Information" shall mean information about Buyer reasonably requested by Seller for the purpose of securing construction and/or permanent financing by Seller of Seller's System. Such information may include: (i) a general description of Buyer and its properties; (ii) information relating to Buyer's thermal energy and electricity requirements; and (iii) financial and demographic information that is otherwise generally available to the public. Buyer shall not be required to, but may in its sole discretion, provide: (i) information that Buyer has not customarily provided in connection with its own financings (other than information relating to Buyer's thermal energy and electricity requirements); (ii) information deemed confidential or proprietary by Buyer;

(iii) information not readily available to Buyer without cost or expense; or (iv) information that will impose upon Buyer any exposure or continuing obligations under federal or state securities laws, rules or regulations.

"Buyer's Interconnection" means the "Point[s] of Interconnection" on Schedule 2.

"Buyer's Representative" means the representative designated by Buyer pursuant to Section 3.04(g). Buyer may change its designated representative by written notice given to Seller in accordance with Article XX.

"Buyer's Thermal Interconnection Facilities" means the control devices, meters, pumps, pipes, ducts, transformers, communication facilities, valves, cables, wires, wire conduits, lines, facilities and/or other physical assets installed by Seller in order to connect Seller's System to the Buyer's Facilities.

"Campus" includes Middlesex College and portions of Thomas A. Edison County Park as shown in Schedules 1.

"Central Energy Center ("CEC")" means the improvements and all trade fixtures, machinery, equipment and other personal property contained therein, as described on Schedule 1, located on the Leased Premises, as depicted in Schedule 15. The Central Energy Center is a component of Seller's System and shall be owned by Seller, constructed by Seller, and operated and maintained by Seller.

"Change Orders" has the meaning set forth in Section 4.02.

"Change in Time or Costs" has the meaning assigned thereto in Section 4.02(b).

"Commercial Operation Date ("COD")" means the date upon which the Seller has achieved Final Facility Acceptance and all punch list items have been completed and that the System is capable of delivering the products and services described herein. The COD is anticipated to be no later than twenty (20) months from the Effective Date or September 1, 2027, but will be adjusted based on the actual Effective Date.

"Contract Interest Rate" means the interest rate designated as the "prime rate" as published each Business Day in the *Wall Street Journal*, or, if at any time the *Wall Street Journal* shall cease to be published, the rate announced from time to time by the largest commercial bank with branches in New York City (as reasonably identified by Buyer) as its "prime", "base" or "reference" rate. The Contract Interest Rate shall in no event exceed the maximum rate of interest allowed by applicable Law.

"Cost Substantiation" means a certificate signed by an authorized representative of the Party incurring costs, stating (a) the reason for incurring such costs, (b) the amount of such costs, (c) the event and Section of this Agreement giving rise to the Party's right to incur such costs, and (d) that such costs have been incurred upon terms and conditions that are intrinsically fair, commercially reasonable, competitive and substantially similar to those that would be available on an arms-length basis with third parties not affiliated with such Party or any constituent party of such Party or any owner of such Party. Such certificate shall be accompanied by copies of all underlying contracts, invoices or charges, together with any additional documentation that is necessary, in accordance with Buyer's practices and procedures (whether Buyer is receiving or providing such documentation) to verify the amount of such costs and expenses and to demonstrate the basis for the amount claimed.

"CPI" means the Consumer Price Index - All Urban Consumers; Series Id.: CUURS12ASA; Area: New York-Newark-Jersey City, NY-NJ-PA; Item: All items; Base Period: 1982-84=100; as published by the United States Department of Labor, Bureau of Labor Statistics. Unless otherwise provided, references herein to the CPI shall be the "Annual" CPI for a year. By way of example, the Annual CPI for calendar year 2024 is 334.209.

"Day" means calendar day.

"Delivery Points" means the points at which Electricity and Thermal Energy, as the case may be, are delivered by Seller to Buyer, as set forth on Schedule 2.

"Delivery Specifications" means the specifications for Electricity and Thermal Energy in each case meeting the requirements set forth on Schedule 2.

"Design" means the detailed Plans and Specifications for construction of Seller's System, as set forth in Schedule 1, Schedule 2 and Schedule 6, as the same may be further changed, modified and completed in accordance with the terms hereof.

"Distribution Service" means the transfer of electricity from Elizabethtown Gas' Interconnection to Buyer's substation and delivery of natural gas.

"Early Payment Price" means up to $16,000,000.00 payable by Buyer to Seller as a pre-payment toward the total project cost as referenced in Article XII, 11.01 (a).

"Effective Date" has the meaning set forth in Section 2.01(a).

"Electrical Interconnection" means the point at which Seller provides Electricity to Buyer within Buyer's switchgear, as described on Schedule 2.

"Electricity" means electricity generated by the Central Energy Center, temporary generators and the potential solar installation as an integral part thereof, reduced by the portion of such electricity consumed by Seller, meeting the Delivery Specifications. Electricity shall be measured in kilowatt hours ("kWh's") and is intended to be the net electricity delivered by Seller to the Electric Interconnection.

"Elizabethtown Gas Tariff" means any natural gas delivered in accordance with the Elizabethtown Gas Tariff currently designated as B.P.U.N.J. No. ____ GAS or any successor thereto.

"Energy Distribution System" means the new system of control devices, meters, pumps, pipes, ducts, transformers, communication facilities, valves, cables, wires, wire conduits, lines, facilities and other physical assets to be constructed and/or installed by Seller pursuant to this Agreement and used to: (i) deliver Thermal Energy from the Seller's Central Energy Center to the designated points of Interconnection at the new buildings, and/or (ii) deliver Electricity from the Central Energy Center to parts of the Campus including new buildings and the existing Campus electrical switch yard, all as shown in Schedule 1. The Energy Distribution System, including both electric and thermal, being installed by Seller is a component of Seller's System and shall be owned, operated and maintained by Seller.

"Energy Services" means the Thermal Energy and Electricity supplied by Seller to Buyer hereunder, in conformance with the specifications set forth in Schedule 2.

"Energy Usage Charges" has the meaning assigned thereto in Section 11.01(a).

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the EDS, the production of electrical and thermal energy from the System and its displacement of conventional energy generation (but excluding net metering bill credits), including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights, Renewable Energy Credits, and Renewable Thermal Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Buyer and Seller shall file all tax returns in a manner consistent with this definition. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits, renewable thermal credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products that may be tradeable in Voluntary or Compliance markets.

"Environmental Contact" means the individual designated by the Parties in Section 20.03 for the other Party to notify regarding any Hazardous Material, Pre-Existing Environmental Condition or other environmental cause or concern, including the notices required in Article XX and Schedule 13.

"Environmental Law" means any applicable federal, state, or local governmental statute, regulation, resolution or ordinance, whether currently existing or hereafter promulgated, or any judicial or administrative decree or order that establishes standards, limits, or requirements to protect human health and the environment from chemical, elemental or physical hazards, including the regulation of potable water, ground water, surface water, solid waste, hazardous waste, landfills and open dumps, above and underground storage tanks, wastewater, biosolids disposal, storm water run-off, air emissions or noise. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, as amended, and all regulations promulgated thereunder: the Comprehensive Environmental Response, Compensation and Liability Act (42

U.S.C. § 9601 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Safe Drinking Water Act (21 U.S.C. § 349; 42 U.S.C. § 201 and §§ 300f through 300j-26), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Noise Control Act (42 U.S.C. 4901 et seq.), the Hazardous Materials Transportation Act, (49 U.S.C. §§ 1801 et m.); and the Homeland Security Chemical Facility Anti-Terrorism Standards (6 CFR Part 27, as authorized by Public Law 109-295 § 550) .

"Environmental Report(s)" means any document identified as an "Environmental Report" in the Environment Disclosure set forth in Schedule 12.

"Event Constituting Breach" has the meanings set forth in Sections 18.01 and 18.02.

"Extended Force Majeure" means a Force Majeure that occurs after Facility Acceptance and continues for an uninterrupted period of eighteen (18) consecutive months.

"Fair Market Value" means the price that will be paid by Buyer for the purchase of Seller's System upon the expiration of this Agreement as determined in accordance with the procedures identified in Article XIV.

"Facility Acceptance" means the date the Central Energy Center and the Energy Distribution Systems are operational and available to provide Energy Services for Beneficial Use to the Buyer and all requirements set forth in Schedule 5 have been satisfactorily met.

"Final Facility Acceptance Date" means the date in which the Seller's Facility is declared fully operational by the Buer, has achieved commercial operation and all punch list items have been completed.

"Force Majeure" means an event, casualty, occurrence, condition or circumstance of any kind or nature beyond the control of a Party, and not the result of fault or negligence of such Party, which renders such Party unable to perform its obligations under this Agreement and which such Party has been unable to overcome with the exercise of Reasonable Efforts. Subject to the foregoing conditions, "Force Majeure" shall include the following acts or events; (i) acts of God, including flood, landslide, earthquake, hurricane, tornado or other extreme or severe weather conditions or cataclysmic occurrence, (ii) acts or omissions of any Governmental Authority, (iii) war, blockage, insurrection, riot, sabotage, acts of a public enemy, acts of terrorism or civil disturbance, (iv) strike, lockouts, slow-down or labor dispute, (v) fire, explosion, nuclear emergency or epidemic and/or pandemic, (vi) quarantines, and (vi) the failure of any contractor, subcontractor or supplier of natural gas, fuel oil or other fuels, electricity, and water to furnish adequate supplies, in a reasonably timely manner; provided, however, that the failure of any contractor, subcontractor, or supplier, other than a supplier of natural gas, fuel oil or other fuels, electricity or water, shall not be deemed to be an occurrence of Force Majeure unless such failure is attributable to an act, event or condition affecting the performance of such contractor, subcontractor, or supplier that would be a Force Majeure occurrence under this Agreement with respect to the affected Party, and in the case of a failure of any contractor, subcontractor or supplier, the affected Party is not reasonably able to obtain a substitute performance of the services, materials, equipment or commodities to have been provided by such contractors, subcontractors, or suppliers.

"Fuel Procurement Process" means the plan attached to this Agreement as Schedule 14.

"Functional Components" means the components of Seller's System that are not Aesthetic Components.

"Governmental Authority" means any federal, state, or local government authority, agency, political subdivision, court or other judicial or regulatory body (including, without limitation, PSE&G, PJM and the NJBPU), officer or public entity, including any zoning authority, building inspector or health, environmental or safety inspector, having jurisdiction over Buyer or Seller.

"Guaranteed Maximum Price ("GMP")" shall having the meaning set forth in Schedule 8, which amount represents the portion of the costs of the Project attributable to, Engineering, Procurement and Construction Costs as set forth on Schedule 4 Part A for the CEC, Part B for the Temporary Power Project, before giving effect to the adjustments which may result in a reduction in the costs eligible for shared savings calculation.

"Guarantor" means DCO Energy, LLC.

"Hazardous Material" means all materials subject to regulation under Environmental Laws, including all pesticides, pollutants, contaminants, chemicals, gasoline, petroleum products, asbestos, radioactive materials (including by-product, source, and/or special nuclear materials), physical hazards such as noise, urea formaldehyde, flammables, explosives, or other hazardous wastes or toxic materials, including materials now or hereafter subject to regulation under any applicable Environmental Law.

"Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into Seller's System, environmental benefits of using Seller's System, or other similar programs available from PSE&G, any other regulated entity, the manufacturer of any part of Seller's System or any Governmental Authority.

"Improvements" shall have the meaning assigned thereto in the Sublease.

"Independent Engineer" means an independent engineer hired by the County of Middlesex to certify that an objective or quantifiable technical standard has been achieved or satisfied.

"Interconnection" means the physical point where delivery of either Thermal Energy or Electricity is delivered by Seller to Buyer, as set forth in Schedule 2.

"Interconnection Facilities" means with respect to a Buyer's Facilities, the Interconnection servicing the same and/or one or more control devices, meters, pumps, pipes, ducts, transformers, communication facilities, valves, cables, wires, wire conduits, lines, facilities and/or other physical assets located inside of such Buyer's Facility connecting the Interconnection to a point in the

Energy Distribution System located outside of such Buyer's Facility. Unless otherwise specified herein, the Interconnection Facilities shall be owned, operated and maintained by Seller.

"Interruption of Service" means the failure of Seller to deliver (i) Electricity generated at the Central Energy Center, as set forth on Schedule 2, in accordance with the Delivery Specifications for a period of forty eight (48) consecutive hours. An Interruption of Service shall not have occurred if the Electricity being supplied by Seller satisfies Buyer's needs, as solely determined by Buyer and taking into account delivery of electricity by PSE&G. Hot Water and Chilled Water are being provided to Buyer on a supplemental basis, with the exception of the Physical Education Center and will not be subject to any Interruption of Service provisions. An Interruption of Service for the Physical Education Center shall have occurred only if the delivery of Chilled Water, in accordance with the Delivery Specifications in Schedule 2, has not been met for a period of seventy two (72) consecutive hours.

"kWh" means kilowatt hour.

"Leased Premises" has the meaning assigned thereto in the Sublease.

"Lender" means the entity or entities providing construction or permanent financing in the form of loans to Seller, to be applied to reimburse or pay Total Project Costs as described in Schedule 4 Part A, secured by all or a portion of Seller's Systems. "Lender" shall include, for the avoidance of doubt, the holders of, and the agents or trustees representing the holders of, any such loans. The Parties agree to cooperate fully and support the Seller in the event that any Lender requires any considerations through additions or modifications to the terms, conditions, documentation or language contained within this ESA relative to placement of the financing.

"Material Adverse Effect" means, with respect to any Person, a material and adverse effect on: (i) such Person's business, operations, assets or liabilities; (ii) the ability to operate or conduct such Person's business in the manner in which it is currently operated or conducted or contemplated to be conducted; (iii) the validity or enforceability of this Agreement against such Person or, in the case of Seller, any Project Documents; or (iv) such Person's ability to perform under this Agreement or the Sublease.

"Meter" means all Primary Billing Meters and other meters, instruments, recording devices and equipment used to measure, record and document all of the information and data required to be measured, recorded and documented hereunder.

"Meter Error" has the meaning assigned thereto in Section 10.04(a).

"Month" or "Monthly" refers to calendar months according to the Gregorian calendar.

"New Agreement" has the meaning set forth in Section 23.02(d).

"NJBPU" means the New Jersey Board of Public Utilities, or any successor agency.

"Operating Year" means each calendar year, or portion thereof, during the Term.

"Party" has the meaning set forth in the preamble hereof.

"Performance Test Requirements" has the meaning provided in Schedule 5.

"Permit" means any waiver, exemption, variance, franchise, certification, approval, permit, authorization, license, consent or similar order or decision of or from any Governmental Authority or Person having jurisdiction or authority over the matter in question.

"Person" means any individual, limited liability company, partnership, corporation, association, business, trust or other entity or Governmental Authority, unincorporated agencies, divisions or instrumentalities, or Indian tribes.

"Plans and Specifications" means the equipment specifications, installation specifications and mechanical, electrical, civil, architectural, instrumentation and structural drawings necessary to construct the Project.

"Planned Maintenance and Repairs" shall have the meaning set forth in Section 6.04.

"Pre-Closing Work" means any and all work done by Seller to design, construct, and commission the Project pursuant to this Agreement prior to Seller's Financial Closing.

"Pre-Existing Environmental Conditions" shall mean any Hazardous Materials or other environmental conditions affecting the Project Site as of the Effective Date.

"Primary Electric Billing Meters" means the Primary Electrical Billing Meters.

"Primary Electrical Billing Meters" means all meters, submeters and associated equipment to be utilized by Seller in measuring Electricity, which measurements will form the basis of the calculation of certain of the monies owed pursuant to Schedule 8 and this Agreement.

"Primary Solar Billing Meters" means all future or pre-existing meters, submeters and associated equipment to be utilized in measuring Solar Energy, which measurements will form the basis of the calculation of certain of the monies owed to third parties for kWh's produced.

"Primary Thermal Billing Meters" means all meters, submeters and associated equipment to be utilized by Seller in measuring Thermal Energy, which measurements will form the basis of the calculation of certain of the monies owed pursuant to Schedule 8 and this Agreement.

"Project" shall mean the development, maintenance and operation of Seller's System including Solar production.

"Project Documents" means this Agreement, the Sublease and Easements.

"Project Schedule" means the timeline associated with the completion of Seller's System.

"Project Site" means the Buyer's Facility, the Leased Premises and the Easement Areas.

"Prudent Industry Practice" means, at a particular time, (i) any of the practices, methods and acts engaged in or approved by a significant portion of the United States industry providing thermal energy and electric generation services at such time, or (ii) with respect to any matter to which clause (i) does not apply, any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts having due regard for, among other things, manufacturers' warranties, the requirements of insurance policies and the requirements of any Governmental Authority of competent jurisdiction.

"PSE&G" shall mean Public Service Electric & Gas Company or any successor or assignee distribution company providing regulated electric distribution service in accordance with the applicable Utility Electric Tariff.

"PSE&G Electric Tariff" means the electric service level provided in accordance with the PSE&G Tariff or any successor thereto.

"Release" has the meaning set forth in Section 20.05(c)(i).

"Reasonable Efforts" means a level of effort which, in the exercise of reasonable business judgment in light of facts known or that should be known at a time a decision is made, can be expected to accomplish the desired result at a reasonable cost to the Party obligated to exercise Reasonable Efforts.

"Replacement Thermal Energy" means Thermal Energy that Buyer obtains from a source other than Seller's System as a result of and Interruption of Service.

"Recital" means a recital of this Agreement, which is hereby incorporated in, and made a part of, this Agreement.

"Regular Services" means the Services (electricity, hot water and chilled water) delivered from the CEC once Final Facility Acceptance has been achieved.

"Required Transfer Actions" has the meaning set forth in Section 15.01.

"Schedule" means a schedule to this Agreement which is hereby incorporated in, and made a part of, this Agreement.

"Section" means a Section of this Agreement.

"Seller" means "MCS Microgrid, LLC".

"Seller's Anticipated System Completion Date" is identified in Schedule 7.

"Seller's Change Orders" has the meaning set forth in Section 4.02.

"Seller's Contractor" means DCO Construction Services, LLC, or such other person or entity approved by Buyer to perform services, provide supplies, materials, drawings, designs or other assets to Seller or on behalf of Seller in connection with Seller's System.

"Seller's Credit Facilities" means any and all documents executed and delivered in connection with Seller obtaining financing for the Project, including but not limited to a trust indenture, loan agreement, promissory note, leasehold mortgage or other financing arrangement, including any related security document, between Seller and a Lender.

"Seller's Emitting Equipment" means the equipment owned and operated by Seller designated as three (3) Jenbacher J612 reciprocating engines with waste heat recovery (each nominally 2MW) and any additional equipment producing emissions that may be added to this Agreement by the Parties via amendment.

"Seller's Financial Closing" means the consummation by Seller of the permanent financing for the Project.

"Seller's Financial Closing Date" means the date of Seller's Financial Closing.

"Seller's Financing Cost" means any and all costs incurred by Seller in connection with Seller's Credit Facilities, which amounts shall be agreed to and fixed by the Parties on Seller's Financial Closing Date and will be include in the Total Project Cost. Seller's Financing Cost shall include, but shall not be limited to, issuance costs, interest during construction and debt service reserve amounts, if any.

"Seller's Environmental Investigation" means Seller's investigation of Pre-Existing Environmental Conditions on the Project Site.

"Seller's Leasehold" means Seller's leasehold interest in the Leased Premises pursuant to the Sublease.

"Seller's Security Documents" means the leasehold mortgage, security agreement and other collateral security documents executed by Seller in favor of Lender to secure the obligations of Seller under Seller's Credit Facilities, as amended and in effect from time to time.

"Seller's System" means, collectively, the Central Energy Center, including any solar if installed by Seller, and the Energy Distribution System.

"Solar Energy" means electricity generated by the solar installation.

"Sublease" shall have the meaning assigned thereto in the Recitals, a form of which is attached hereto as Schedule 15.

"System" and "System Descriptions" means the design descriptions and scope of work set forth on Schedule 1, Schedule 2 and Schedule 6.

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

"Technical Verification" means a certification by the Independent Engineer that an objective or quantifiable technical standard has been achieved or satisfied.

"Temporary Electric Power" means the kWh's generated by temporary equipment prior to the Final Facility Acceptance Date of the CEC" as described in Scheule 1 Part B.

"Temporary Loss Mitigation Plan" has the meaning set forth in Section 12.03.

"Term" has the meaning set forth in Section 2.01(a).

"Thermal Energy" means Chilled Water and hot water generated at the Central Energy Center and delivered to Buyer's Facilities, through the Energy Distribution System.

"Thermal Interconnection" means the points at which Seller provides Thermal Energy to Buyer's Facilities, as described in Schedule 2.

"Total Project Costs" means the cost of the Project, including Buyer's development costs, as specified on Schedule 4 Part A for the CEC, and Schedule 4 Part B for the Temporary Power Project, as adjusted pursuant to Section 4.02.

1.02 Schedules. The following Schedules are attached to this Agreement; provided, however, that where the terms of such Schedules are inconsistent with the specific provisions of this Agreement exclusive of such Schedules, the provisions of this Agreement exclusive of such Schedules shall control the interpretation thereof:

1. System Description and Scope of Work – Part A – Sustainable Microgrid, Part B- Temporary Power
2. Technical Specifications, Delivery, Metering and Interconnections
3. Buyer's Equipment, Buyer's Energy Related Equipment and operation of Buyer's Equipment
4. Total Project Costs – Part A and Part B
5. Testing Protocol Requirements
6. Project Site and Drawings of System Facilities and Locations
7. Project Schedule
8. Schedule of Rates and Charges
9. Operational Monitoring System Specifications
10. Seller's Permits Required
11. Buyer's Permits Required
12. Environmental Disclosure
13. Hazardous Material Protocol
14. Fuel Procurement Process
15. Form of Sublease
16. Early Termination Values
17. Form of Corporate Guaranty
18. Solar Insolation

1.03 Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns, (c) the words "herein," "hereof' and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Schedules shall be construed to refer to Articles of, Sections of and Schedules to, this Agreement (unless expressly referring to another agreement).

ARTICLE II
TERM

2.01 Term.

(a) Commencement and Length of Term. This Agreement shall become effective and legally binding upon the Parties and their permitted successors and assigns, and be enforceable in accordance with its terms, as of the date first set forth above (the "Effective Date"), and shall remain in full force and effect, unless otherwise terminated as provided herein, for a term commencing on the Effective Date and continuing for a period ending on the twenty-fifth (25^{th}) anniversary of the Final Facility Acceptance (the "Term"). The Parties expressly acknowledge that Seller shall be obligated to deliver, and Buyer shall be obligated to purchase, subject to the terms and conditions hereof, Energy Services for the duration of the identified Term. Effective as of any termination of this Agreement, the Parties will no longer be bound by the terms and conditions hereof, except: (i) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising hereunder prior to termination; (ii) any provisions which expressly survive the expiration or earlier termination of this Agreement; and (iii) as otherwise provided herein.

(b) Extension of Term. To the extent permitted by law, Buyer may, by providing written notice to Seller no later than six (6) months prior to the expiration of the Term, extend the Term for one (1) five (5) year extension on the same terms and conditions in effect immediately before the expiration of the Term.

2.02 Effective Date Deliveries. Simultaneous with the execution and delivery of this Agreement, the following additional documents shall be delivered:

(a) Seller shall deliver to Buyer certificates of insurance confirming that Seller has procured all insurance coverage required herein or has binding commitments therefore, as appropriate, all in a form and of a substance reasonably acceptable to Buyer;

(b) Seller and Buyer shall each execute and deliver the Sublease.

(c) Seller and Buyer shall execute and deliver all Easement Agreements.

(d) Buyer shall provide a copy of a fully executed Sublease to Seller.

(e) Seller shall execute and deliver the Corporate Guaranty in substantially the form of Corporate Guaranty.

ARTICLE III
REPRESENTATIONS AND WARRANTIES; COVENANTS

3.01 Seller's Representations and Warranties. Seller makes the following representations and warranties as of the Effective Date:

(a) Seller currently is a single member limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey; is duly qualified to conduct business in the State of New Jersey; and has the power to own its property and to carry on its business as it is now being conducted and as it is proposed to be conducted pursuant to the terms hereof.

(b) There is no action, suit, investigation or proceeding pending or, to the knowledge of Seller, threatened against Seller or an Affiliate of Seller, or any of their properties, which could reasonably be expected to have a Material Adverse Effect on Seller.

(c) Seller has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Project Documents, the execution, delivery and performance by Seller of this Agreement and the Project Documents have been duly authorized by all necessary company actions on its part, and assuming due execution by Buyer, this Agreement has been duly executed and delivered by Seller and constitutes a legally binding obligation of Seller, enforceable against it in accordance with its terms, except (in the case of enforceability) as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

(d) Seller has not incurred any liability, contingent or otherwise, for brokers' or finders' fees relating to the transactions contemplated by this Agreement or any related document for which Buyer will have any responsibility whatsoever.

(e) Seller has all financial resources available to perform the transactions contemplated by this Agreement, the Project Documents and any related documents and to perform its obligations hereunder and thereunder.

(f) There are no Bankruptcy proceedings pending, or to Seller's knowledge, being contemplated or threatened against it.

(g) Seller acknowledges and agrees that, except as expressly set forth in this Agreement, Buyer has not made any statements, representations or warranties regarding the

Project Site or Buyer's Facility. Seller acknowledges and agrees that except for the representations and warranties expressly set forth in this Agreement and the information provided by Buyer to Seller pursuant to this Agreement, Seller has not relied and will not rely on any statement, representation, warranty, or information provided by or on behalf of Buyer regarding the Project Site or any Buyer's Facility or the fitness of the Project Site or any Buyer's Facility for any particular use of Seller. Buyer expressly disclaims, and Seller waives, all implied warranties including, without limitation, any warranty of suitability or fitness of the Project Site and each Buyer's Facility for any particular use or purpose. Seller expressly acknowledges that Buyer has afforded Seller a full and complete opportunity to inspect and evaluate the Project Site and each Buyer's Facility and determine for itself the suitability of the Project Site and Buyer's Facility for the construction, operation and maintenance of Seller's System. Except with respect to the Pre-Existing Environmental Conditions specified in Article XX and Schedule 13, Seller shall be responsible for determining the suitability of soil, drainage, slope, preexisting structural conditions and other matters for or with respect to Seller's System.

3.02 Seller's Covenants. Seller covenants and agrees with Buyer that, throughout the Term, Seller will perform or cause to be performed the obligations set forth below.

(a) Subject to Article XIII, Seller will provide to Buyer true, accurate and complete copies of the Project Documents as they may be in effect from time to time and any amendments, change orders, or modifications thereto.

(b) Seller will maintain all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Project Documents.

(c) Subject to the terms and conditions of this Agreement, Seller shall provide the Energy Services, including those referred to in Sections 6.01 and 16, and the operation and maintenance services, including those referred to in Sections 6.02.

(d) Seller agrees that it will keep Seller's System and Seller's Leasehold free and clear of or will promptly have discharged, all material liens, mortgages, or encumbrances of any kind, except for such liens, mortgages, and encumbrances; (i) arising out of Seller's Credit Facilities in favor of Lenders, (ii) in the form of easements granted to Seller by Buyer to allow operation of the Central Energy Center or the Energy Distribution System; or (iv) in the form of easements or rights-of-way granted to public utilities or Governmental Authorities required for Seller to fulfill its obligations hereunder.

(e) If, as a result of any act or omission of Seller or any agent, contractor or subcontractor of Seller or any other Person, a lien, mortgage or encumbrance of any kind is placed upon any portion of Buyer's Facility or if as a result of any act or omission of Seller or any agent, contractor, or subcontractor of Seller or any other Person a lien, mortgage or encumbrance of any kind is placed upon any easements, licenses or other interests in real property conveyed by Buyer to Seller, other than a mortgage or encumbrance permitted under Section 3.02(e), then Seller, upon receipt of notice thereof, shall promptly take all reasonable and necessary steps to remove such lien, mortgage or encumbrance at Seller's sole cost and expense. If necessary, Seller may commence legal process to challenge such lien, mortgage or encumbrance in satisfaction of this Section 3.02(e).

(f) Seller shall keep the records and documents related to Seller's System and the operations and maintenance records related to the Buyer's Thermal Interconnection Facilities, in accordance with sound business practices and in such a manner to allow Buyer to determine whether Seller's System and Buyer's Thermal Interconnection Facilities are being operated in accordance with the terms hereof and in accordance with Prudent Industry Practice. All such records shall be provided to Buyer as part of the Required Transfer Actions.

(g) Seller shall comply in all material respects with all Applicable Laws.

(h) Seller shall maintain and preserve its existence and good standing in the jurisdiction of its organization and its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary (other than such jurisdictions in which the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect with respect to Seller).

(i) Seller shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its obligations of whatever nature, including any property taxes, if any, applicable to Seller's System, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings or where the failure to do so could not reasonably be expected to have a Material Adverse Effect with respect to Seller.

(j) Seller shall at all times be authorized to do business in the State of New Jersey.

(k) Seller shall obtain from each contractor a copy of a current and valid Business Registration Certificate, which it shall promptly forward to Buyer, prior to such contractor starting work on the Project.

(l) Seller shall maintain records for products and/or services delivered to Buyer and pursuant to this Agreement for a period of three (3) years from the date of final payment by Seller to such third-party vendor, supplier or subcontractor. Such records shall be made available to Buyer upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

(m) Seller shall designate a Seller's Representative who shall act as Buyer's primary point of contact with Buyer with respect to the development and construction of Seller's System.

(n) Seller shall promptly repair or replace, to its condition prior to such damage, any part of Buyer's Equipment located on the Project Site that is damaged or destroyed caused solely due to the negligence of Seller, its agents, employees, contractors and subcontractors (other than Buyer, its agents, employees, contractors and subcontractors) during the construction or operation of Seller's System.

3.03 Buyer's Representations and Warranties. Buyer makes the following representations and warranties as of the Effective Date:

(a) Buyer is a public body corporate and politic under the Laws of the State of New Jersey, and has the power to own or lease its property and to carry on its business as it is now being conducted and as it is proposed to be conducted pursuant to the terms hereof.

(b) Buyer is the lessee of the Project Site with all rights necessary to grant the authorities hereunder to Seller, subject to all easements, restrictions and other title matters of record in effect from time to time.

(c) There is no action, suit, investigation or proceeding pending or, to the knowledge of Buyer, threatened against Buyer or the Project Site, which could reasonably be expected to have a Material Adverse Effect on Buyer's ability to perform its obligations hereunder.

(d) Buyer has all requisite power and authority to execute, deliver and perform its obligations under this Agreement, and the execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary action on its part, and this Agreement has been duly executed and delivered by Buyer and constitutes a legally binding obligation of Buyer, enforceable against it in accordance with its terms, except (in the case of enforceability) as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

(e) The execution, delivery and performance of this Agreement will not result in a breach or violation of or conflict with, or constitute a default under, any term or provision of any material mortgage, lease, agreement or other instrument, or any material judgment, decree, governmental order, statute, rule or regulation, by which Buyer is bound or to which all or a substantial part of its assets are subject, which could reasonably be expected to have a Material Adverse Effect on Buyer, or result in the creation or imposition of, or the obligation to create or impose, any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Buyer. No material approval by or authorization of any Governmental Authority is necessary in connection with the execution and delivery by Buyer of this Agreement.

(f) Buyer acknowledges that Energy Services to be provided by Seller are essential services to the operations of Buyer and the payments therefore will constitute operating expenses.

(g) Buyer has acquired or will acquire or arrange for all easements and other real estate related interests from third parties necessary to interconnect Seller's System with Buyer's Facility and perform its obligations under this Agreement in a timely manner so as not to delay the Project Schedule.

3.04 Buyer's Covenants. Buyer makes the following covenants, each of which shall be applicable throughout the Term:

(a) Buyer will provide to Seller true and correct copies of all documents related to Buyer's Facilities as reasonably requested from time to time by Seller for purposes of financing, construction, repair or maintenance of Seller's System.

(b) Buyer will maintain all requisite power and authority to execute, deliver and perform its obligations under this Agreement.

(c) Buyer shall timely make all payments due hereunder to Seller in lawful money of the United States.

(d) The design, construction, equipping, installation and operation by Buyer of Buyer's Equipment will be in accordance with Prudent Industry Practice.

(e) Buyer shall comply in all material respects with all Applicable Laws.

(f) Subject to the terms and conditions of this Agreement, Buyer shall purchase all Energy Services from Seller Thermal Energy and Electricity pursuant to Sections 6.01(c).

(g) Buyer shall designate (i) a Buyer's Representative, who shall act as Seller's primary point of contact with Buyer for all purposes and (ii) a Buyer's Engineer if desired, who may act as Seller's point of contact with Buyer with respect to the design and construction of Seller's System.

(h) Buyer shall make available to Seller its water supply and wastewater collection systems at the points of interconnection shown on Schedule 2 and has the authority (or shall obtain such consents or approvals) necessary to ensure Seller's interconnection. Seller shall perform all work necessary to interconnect Seller's System with the water supply system and wastewater collection systems. Seller shall be entitled to utilize the water supply and wastewater collection systems during the Term hereof.

(i) Buyer shall promptly repair or replace, to its condition prior to such damage or destruction, any part of Seller's System located on the Project Site that is damaged or destroyed by Buyer, its agents, employees, contractors and subcontractors (other than Seller, its agents, employees, contractors and subcontractors) during the construction or operation of such part of Seller's System; in the alternative, Buyer may reimburse Seller for the reasonable cost of repairing or replacing the damaged or destroyed part(s).

(j) Buyer shall keep Seller's System and Seller's Leasehold free and clear of all liens, mortgages, or encumbrances of any kind, except for such liens, mortgages, and encumbrances reflecting easements or rights-of-way granted to public utilities or Governmental Authorities.

(k) All information provided by Buyer to Seller, as it pertains to the Buyer's Facility's physical configuration, Buyer's planned use of Buyer's Facility, and Buyer's estimated electricity requirements, is accurate in all material respects.

(l) Hazardous Substances. To Buyer's knowledge, there are no Hazardous Substances in any portion of the Project Site where the Seller's System is to be located or the installation is to be performed.

(m) Buyer shall carry out its responsibilities set forth in this Section 3.04 at no cost to Seller and in accordance with provisions of this Agreement.

ARTICLE IV
DESIGN, CONSTRUCTION AND FINANCING OF SELLER'S SYSTEM

4.01 Project Design and Construction.

(a) Seller to Complete Design and Construct the Project. Seller shall, at its own cost and expense, complete the design, develop, construct, equip and complete, or cause to occur the completion of design, development, construction, equipping and completion of, the Project no later than Seller's Anticipated System Completion Date in material compliance with the requirements hereof, including substantially in accordance with the Design, Schedules 1, 2, and 6 (except as the Project may be modified in accordance with the terms hereof), and Schedule 15 (the Sublease), and in compliance with Applicable Laws and Prudent Industry Practice. All building materials, machinery and equipment for the Project shall be new and of good quality in accordance with the Design and Project Documents. Seller's System shall meet or exceed generally accepted engineering and construction practices as well as applicable codes and standards.

(b) Design Review by Buyer. On the date hereof, the Design is approved by Buyer. In connection with the completion of the Design, Seller shall submit to Buyer for review any modifications to, and changes in, the Design, including without limitation changes or modifications to Plans and Specifications, detailed engineering plans, specifications, drawings, or similar materials relating to the Design including flow diagrams, general arrangements, electric single lines, equipment data sheets, equipment specifications and installation specifications. Buyer shall have a period of ten (10) Business Days after receipt to make any comments to Seller's submissions, otherwise Buyer's approval shall be deemed granted.

(c) Construction According to the Design. Provided Buyer's participation does not unreasonably impede Seller's day-to-day operations on the Project, Buyer shall be entitled to monitor (through Buyer's Representative, or Buyer's Engineer) Seller's construction of the Project from its inception to Facility Acceptance, including participation in all construction meetings contemplated by the Project Documents. Notwithstanding the foregoing, Buyer shall not interfere with the orderly progression of construction, shall observe all safety procedures reasonably imposed by Seller or its contractors, and shall provide reasonable notice of all site visits. At a minimum, the following restrictions are placed upon construction activities, and Seller will provide for the incorporation of these restrictions in all agreements with contractors and subcontractors:

i. Access to the construction site will be limited to those involved with the work;

ii. Seller must notify Buyer in writing at least seventy-two (72) hours in advance when coordination meetings requiring Buyer's participation are required (notification via e-mail shall satisfy the notice requirements under this Section 4.01(d)(ii));

iii. Seller will cause all Project Site safety and access requirements reasonably imposed by Seller and Buyer to be satisfied;

iv. Seller, throughout the construction period, shall be responsible for the enforcement of discipline and good order among the workers on the Project Site;

v. All proposed signage, if any, shall be subject to Buyer's approval and shall be in accordance with any municipal sign ordinances;

vi. Except as provided on Schedule 13, Seller and Seller's contractors shall not bury or burn or otherwise dispose of construction debris on the Project Site; and

vii. Construction activities will comply in all material respects with Applicable Law.

(d) Payment for Construction. Seller covenants and agrees to pay or cause to be paid, the costs and expenses incident to any construction related to the Project on the Project Site. In addition, Seller shall reimburse Buyer for the documented reasonable and actual out-of-pocket costs for police, security and/or traffic control during construction.

4.02 Change Order.

(a) Seller Change Orders. Seller shall have the right at any time to propose changes to the approved Design. Seller shall provide written notice of any such proposed change to Buyer:

(i) specifying in detail the nature of each such proposed change (a "Seller Change Order") and shall provide all information in connection therewith reasonably requested by Buyer. If a proposed change is not reasonably expected to: (A) alter or modify Seller's ability to meet the requirements of Schedule 2, (B) result in any material delay in Seller's Anticipated System Completion Date, (C) result in any material modification or change to Schedule 7, (D) change any specification or drawing to invoke a lower code or standard, (E) result in any single change to the cost of the Project in excess of $5,000 (or $25,000 for all such changes in the aggregate), or (F) substitute materials of a lesser quality (or inferior warranty coverage) than those contained in the approved Design, such changes shall be approved by Buyer unless Buyer can demonstrate that such changes can be expected to have a Material Adverse Effect on Buyer. Changes not described in clauses (A) through (F) above, that do not affect an Aesthetic Component of the System, shall be subject to Buyer's approval in their reasonable discretion. In all events, proposed changes that materially affect an Aesthetic Component of the System shall be subject to Buyer's approval in its sole discretion. Approvals and disputes regarding a proposed change or Seller Change Order shall be subject to Cost Substantiation and shall be resolved as provided in Section 4.02(c).

(b) Buyer Change Orders. Buyer shall have the right at any time to propose changes to the Aesthetic Component of the approved Design. Buyer shall provide written notice to Seller specifying in detail the nature of each such proposed change (a "Buyer Change Order") and shall provide all information in connection therewith reasonably requested by Seller. If a proposed Buyer Change Order results in a change to the cost of Seller's System or in the Project Schedule ("Change in Time or Costs"), Seller shall provide written notice, together with a detailed estimate, to Buyer of the Change in Time or Costs. Seller shall provide to Buyer all information reasonably requested by Buyer to document such Change in Time or Costs. If a proposed Buyer Change Order affects a Functional Component of Seller's System, Seller shall so advise Buyer and in writing and shall have the right to disapprove of such Buyer Change Order unless Buyer agrees to commensurate adjustments to Seller's performance obligations set forth on Schedule 2 and the rates and charges set forth on Schedule 8. Approvals and disputes regarding a proposed Buyer Change Order shall be subject to Cost Substantiation and shall be resolved as provided in Section 4.02(c). Buyer Change Orders and Seller Change Orders are each a "Change Order."

(c) Approval Process and Dispute Resolution for Change Orders. Other than with respect to emergency Change Orders which shall be reviewed or approved as promptly as needed, the Party being requested to review or approve a Change Order shall have a period of thirty (30) Business Days after receipt to approve or reject such submissions, with any rejection being accompanied with a description of recommended measures to be taken by the other Party that will result in approval on resubmission (or why resubmission of any similar proposal would be rejected). Failure of a Party to approve or reject any submissions within such thirty (30) Business Day period shall be deemed approval by such Party. Approval of submissions by Buyer shall not relieve Seller from the obligation to obtain all other necessary approvals and permits required by various Governmental Authorities or from complying in all material respects with the Design, the Plans and Specifications, the Project Documents, and all applicable building codes and ordinances and other Applicable Laws. Seller shall not be liable for Seller's System failure to perform, nor shall a Seller's Event Constituting Breach occur if Buyer denies a modification or Change Order, which results in a delay in the Project Schedule or the inability for Seller's System to meet the Delivery Specifications. Any dispute that involves changes to costs shall be subject to Cost Substantiation. If there is a dispute between the Parties regarding whether a Party has unjustifiably withheld an approval, the Parties shall first negotiate in good faith to resolve such dispute. If the dispute relates to a Design matter and the Parties are unable to resolve such dispute themselves, such dispute shall be considered for resolution pursuant to Section 8.01(b).

4.03 Start-Up and Facility Acceptance of Seller's System. Seller shall perform any and all work reasonably necessary to achieve Facility Acceptance, including without limitation, testing as set forth in Schedule 5.

4.04 Financing of Seller's System and Buyer's Cooperation in Seller's Financing. Seller may, in its discretion, obtain third-party financing for the Design, acquisition, development, construction, furnishing, equipping, operation and maintenance of Seller's System. Buyer agrees to cooperate reasonably with Seller, to take any appropriate measures to assist Seller, including the acceptance of any necessary additions or modifications to this Agreement if required as part of any financing or refinancing of the Project. Buyer shall have no rights associated with the Seller's structure or obligations for financing; any attempt to interfere or participate will be considered a breach of this Agreement by Buyer.

4.05 Ownership of Seller's System; Tax Credits and Incentives. Throughout the Term (except as otherwise set forth in Section 14.02), Seller shall be the legal and beneficial owner of Seller's System at all times, including all Tax Credits, Environmental Attributes and Incentives related to the Seller's System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Project Site. Notwithstanding the foregoing, in the event Seller participates in any Environmental Attributes, Seller shall retain the economic benefit equal to forty percent of such Environmental Attributes with Buyer receiving sixty percent of such Environmental Attributes. Each of the Seller and Buyer agree that the Seller (or the designated assignee of Seller) is the tax owner of Seller's System and all tax filings and reports will be filed in a manner consistent with this Agreement. The Seller's System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Buyer covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Project Site on notice of the ownership of the Seller's System and the legal status or classification of the Seller's System as personal property. If there is any mortgage or fixture filing against the Project Site that could reasonably be construed as prospectively attaching to the Seller's System as a fixture of the Project Site, Buyer shall provide a disclaimer or release from such lienholder. If Buyer is the fee owner of the Project Site, Buyer consents to the filing of a disclaimer of the Seller's System as a fixture of the Project Site in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Buyer is not the fee owner, Buyer will obtain such consent from such owner. Upon request, Buyer agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Buyer), any mortgagee with a lien on the Project Site, and other Persons holding a similar interest in the Project Site. To the extent that Buyer does not own the Project Site or Facility, Buyer shall provide to Seller prompt written notice of receipt of notice of eviction from the Project Site or Facility or termination of Buyer's lease of the Project Site and/or Facility. Buyer shall reasonably cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Incentives and the benefit of all Tax Credits all as related to the System, including by using the electric energy generated by the Seller's System in a manner necessary to qualify for such available Environmental Attributes, Incentives and Tax Credits. Buyer shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Incentives related to the System are inadvertently paid directly to Buyer, Buyer shall promptly pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Buyer, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Buyer's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Buyer's timely publication.

ARTICLE V
CONSTRUCTION PROGRESS

5.01 Project Schedule. Attached hereto as Schedule 7 is the Project Schedule and subject to Buyer's cooperation as set forth herein. Seller shall use its Reasonable Efforts to cause Seller's System to be constructed and connected to the various points within Buyer's Facilities in accordance with the Project Schedule. Seller shall use Reasonable Efforts to accomplish the Project Schedule.

5.02 Consequences of Non-Compliance with the Project Schedule. Except as otherwise expressly provided herein including, but not limited to Force Majeure, a Buyer Change Order, or any other reason outside of Seller's control, Seller's failure to meet any of the event dates established in the Project Schedule shall not constitute an Event Constituting Breach hereunder and therefore, there shall be no liability. By way of example only, if any event date set forth in the Project Schedule is missed due to the actions or inactions of a Governmental Authority, including, but not limited to, any regulatory approvals, governmental approvals or Permits, neither Seller nor Buyer shall have any liability for such missed event dates. When a missed event date is not caused by a Seller breach, the dates of compliance for such event dates which are impacted by the occurrence of the missed event date shall be rescheduled to a date on the same timeframe as originally established prior to the missed event date.

5.03 Construction Progress Reports. Seller shall provide Buyer with monthly progress reports in form and detail reasonably satisfactory to Buyer demonstrating compliance with the Design and the Project Documents; compliance with budget; and compliance with the Payment Schedule for the previous month. In addition, reports as to compliance or noncompliance with the Project Schedule shall be updated at least monthly to assure Buyer that construction of the Project will be complete in sufficient time. Upon request of Buyer, Seller shall deliver or cause to be delivered to Buyer copies of all soils reports, surveys, hazardous wastes or toxic materials reports, feasibility studies, and other similar written materials prepared for or delivered to Seller pursuant to the Project Documents with respect to the Project Site within ten (10) days after receipt by Seller. All correspondence and documents related to the construction of the Project shall be available for review and inspection during regular Business Day hours by Buyer at Seller's construction office on or near the Project Site upon reasonable notice to Seller.

ARTICLE VI
DELIVERY OF SERVICES; OPERATIONS AND MAINTENANCE

6.01 Energy Services.

(a) Beneficial Use Energy Services. Seller may, at any time after the Effective Date, provide certain Energy Services, including temporary, to Buyer. If Buyer receives Energy

Services prior to Facility Acceptance or Buyer's Commercial Operation Date, Buyer shall pay for the Energy Services delivered to Buyer.

(b) Permanent Energy Services. Commencing on Final Facility Acceptance and continuing throughout the Term, Seller shall provide, or cause to be provided, Energy Services, subject to the exceptions contained in this Agreement, and Buyer shall receive and purchase from Seller, Energy Services subject to Sections 6.03, 6.04, 6.05 and 6.06. In providing Energy Services, Seller shall comply in all material respects with all Applicable Laws.

(c) Electricity. Commencing on the Project's ability to produce and deliver Electricity to the Campus and continuing throughout the Term, Seller shall provide or cause to be provided to Buyer Electricity, meeting the Delivery Specifications, as set forth in Schedule 2. The Parties acknowledge that, at times, Buyer's Electric Load may differ from the amount of Electricity generated by Seller's System. Buyer shall maintain in full force and effect its electric service agreements with PSE&G for its current supply of approximately 3 MW of service or other arrangements for backup, standby, supplemental and/or maintenance service, in order to meet Buyer's Electric Load. To the extent that Buyer's Electric Load exceeds the amount of Electricity generated by Seller's System, Buyer's Electric Load requirements will be satisfied through the seamless delivery of utility power from PSE&G at PSE&G's applicable tariff rates, however, Buyer shall purchase all of the Electricity and Solar generated by Seller's System prior to receiving electricity from PSE&G. To the extent that Buyer's Electric Load is less than the amount of electricity generated by Seller's System, Buyer shall only pay for the Electricity consumed by Buyer. Notwithstanding the foregoing, Buyer shall at all times purchase from PSE&G, at PSE&G's applicate tariff rates, such minimum amount of electricity as is necessary and required pursuant to Buyer's interconnection agreement with PSE&G. Seller shall also provide Temporary Electric Power to the specifically defined Buyer locations in advance of the Commercial Operations Date of Seller's System. Buyer shall pay Seller for Electricity at the rates and at the time and in the manner set forth in Article XI and, as applicable to PSE&G consistent with the PSE&G Service Agreement.

(d) Thermal Energy. Commencing on Final Facility Acceptance Date and continuing throughout the Term, Seller may provide or cause to be provided to Buyer Thermal Energy, in the form of hot water, and chilled water as applicable, as set forth in Schedule 2. Thermal Energy shall be provided only to Buyer's Facilities set forth on Schedule 2. Seller shall charge Buyer for the hot water and chilled water delivered at the rates and at the time and in the manner set forth in Article XI.

(e) Title and Risk of Loss. Title to, and risk of loss of, Energy Services provided in accordance with this Agreement shall transfer from Seller to Buyer at the Delivery Points. Seller warrants that it will deliver Energy Services free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

6.02 Seller's Operation and Maintenance Responsibilities. Subject to Buyer's rights set forth in Section 6.05 and subject to Buyer's obligations as set forth in Section 6.06:

(a) Seller's System. Other than with respect to any repair or maintenance required as a result of a breach or negligence by Buyer, Seller shall be responsible for the operation, repair and maintenance (including capital expenditures and replacements) of Seller's System at its sole expense. Seller's System shall at all times be operated and maintained in accordance with all Applicable Laws, Prudent Industry Practices and in a manner that shall enable Seller to provide the Energy Services in a safe, reliable and efficient manner in accordance with Schedule 2.

(b) Buyer's Thermal Interconnection Equipment. Other than with respect to any repair or maintenance required as a result of a breach or negligence by Buyer, Seller shall be responsible for the operation, repair and maintenance of Buyer's Thermal Interconnection Equipment at Seller's sole expense. Buyer's Thermal Interconnection Equipment shall at all times be operated and maintained in accordance with all Applicable Laws, Prudent Industry Practices and in a manner that shall enable Seller to provide the Energy Services in a safe, reliable and efficient manner in accordance with Schedule 2.

(c) Pumps. Buyer shall be responsible for providing any additional pumps necessary for the circulation of the hot water and chilled water beyond the point of delivery. Buyer will be responsible for the operation, repair and maintenance (including capital expenditures and replacements) of the distribution pumps on the secondary side beyond the point of interconnection.

(d) Buyer's Energy Related Equipment. Seller may, at specific times, have the need to operate some of Buyer owned or utilized boilers and/or chillers on the Campus. The Buyer owned equipment is to be used as a supplemental energy resource if and when needed, however Seller will provide no maintenance on Buyer's equipment. The specific equipment which may need to be operated, is identified in Schedule 3 (Buyer Owned Equipment). Buyer will be responsible to maintain the identified equipment in a manner that is acceptable to Seller and meets acceptable operating industry standards for each specific type of equipment.

6.03 Interruption of Service. Each Party shall promptly notify the other upon becoming aware of any Interruption of Service. In the event of an Interruption of Service, Buyer and Seller shall implement the Temporary Loss Mitigation Plan, using Reasonable Efforts to curtail or minimize the duration of such event. Immediately following the commencement of any Interruption of Service, Seller shall use its Reasonable Efforts to restore Seller's System to service. The supply of hot water is a supplementary service and may be interrupted at any time and is dependent on the operation of the electric generation at the Central Energy Center. During any period of time where the supply of hot water from Seller's system is not available, Buyer will utilize their existing hot water generating equipment to satisfy their immediate needs until hot water service can be provided from the Central Energy Center. An Interruption of Service may occur if the Seller is unable to provide Chilled Water to the Physical Education Center as described in the definition of Interruption of Service and the Temporary Loss Mitigation Plant will be utilized to return service to that location as described.

6.04 Planned Maintenance and Repairs to Seller's System. The Parties agree that, from time to time, it will be necessary for Seller to plan for maintenance and repairs to Seller's System ("Planned Maintenance and Repairs"). Seller shall provide Buyer with thirty (30) days' advanced written notice of such Planned Maintenance and Repairs. During any Planned Maintenance and Repairs, Buyer shall obtain electricity in accordance with its interconnection agreement with PSE&G. In the event that the electric supply from PSE&G in combination with the available generation from the Central Energy Center is inadequate to supply all of the Buyer's needs, Seller will be required to provide temporary generating capacity to satisfy the Buyer's electric demand. During any period where the recovery of hot water from generation is insufficient to cover the needs of the Buyer, the Buyer's boilers will be used to satisfy the load requirements

(a) Notice. Seller shall, prior to the commencement of each Operating Year, prepare and deliver to Buyer a schedule of Planned Maintenance and Repairs that conforms to Prudent Industry Practice. If Buyer reasonably objects to Seller's Planned Maintenance and Repairs schedule, Buyer shall notify Seller as soon as practicable, and the Parties shall use Reasonable Efforts to agree upon a revised Planned Maintenance and Repairs schedule for such Operating Year. During such Operating Year, if Buyer requires particular Planned Maintenance and Repairs to be rescheduled, Buyer shall provide a minimum of thirty (30) Days' prior written notice to Seller. If such Planned Maintenance and Repairs can be rescheduled, Buyer and Seller shall attempt to agree on a mutually acceptable alternate date for such Planned Maintenance and Repairs.

(b) Cooperation. Buyer, and Seller shall use Reasonable Efforts to work together to schedule any Planned Maintenance and Repairs at times that will minimize interference with Buyer's Campus operations.

Unplanned Maintenance and Repairs. (a) From time to time, it may become necessary to remove Seller's equipment from service as a result of either equipment failure or for an unscheduled repair of some part of the system. Buyer will be notified within two (2) hours of such a condition or event having been identified. In the event that the Central Energy Center is unable to provide power up to its specified capacity in Schedule 2, the full capability the PSE&G interconnection will be utilized, the Loss Mitigation Plan will be implemented and if the available generation of Electricity from the Central Energy Center is insufficient to satisfy the remainder of the Buyer's needs, the Seller will be responsible to provide temporary equipment to address the electric needs of the Buyer. The Buyer's Thermal needs will be satisfied through the use of Buyer's equipment with the exception of chilled water at the Physical Education Center which will require Seller to provide temporary chilled water production equipment according to the Loss Mitigation Plan.

(b) Non-Standard System Repair and Maintenance. Notwithstanding anything herein to the contrary, if Seller incurs incremental costs to maintain the Seller System due to a Force Majeure event, any unforeseen and undisclosed condition at the Project Site, or due to the inaccuracy of any material information provided by Buyer and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith. In the event the Parties cannot agree on such equitable adjustment, the Parties shall use the dispute resolution mechanisms set forth in Article VIII.

6.06 Alterations to Seller's System. Other than with respect to any equipment that may need to be replaced as a result of a breach of this Agreement or negligence by Buyer (which shall be at the cost and expense of Buyer), Seller shall, at its own cost and expense, be permitted to replace or upgrade any component of Seller's System or to add components to Seller's System. All replacements and additions must be at least of equal or better quality and efficiency than the item being replaced or modified. All replacements, upgrading or additions of such components are for Seller's account and shall be owned by Seller as part of Seller's System subject to the terms of this Agreement. The Parties shall collaborate on the design of any Aesthetic Components of any alterations to Seller's System, and Buyer shall have final right of approval over the Aesthetic Components of any alteration to Seller's System so long as it does not impact performance and so long as Buyer is willing to accept any additional costs associated with changes to the Aesthetic Components.

6.07 Security. Buyer shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the Seller System against known risks and risks that reasonably should have been known by Buyer. Seller shall be responsible for using commercially reasonable efforts for all underground mark outs relating to future improvements or emergency repairs of any items installed by Seller for Seller System. Buyer will not conduct activities on, in or about the Project Site or the Facility that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Seller System.

ARTICLE VII
SYSTEM PERFORMANCE OBLIGATIONS

7.01 Seller's Performance Obligations, Operations Claim.

(a) Seller shall provide Energy Services in accordance with Section 6.01 in conformance with the requirements set forth on Schedule 2 and at the rates and charges set forth on Schedule 8 and as provided in Article XI.

(b) Seller shall notify Buyer as soon as practicable after learning of any circumstance of noncompliance or identifying any data trends which suggest that it is reasonably likely that noncompliance has or will continue to occur.

(c) Buyer shall notify Seller as soon as practicable after learning of any circumstance of noncompliance or identifying any data trends which suggest that it is reasonably likely that noncompliance by Seller has or will continue to occur. Buyer shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the Seller's System; or (ii) any occurrences that could reasonably be expected to adversely affect the Seller's System. Buyer shall notify Seller promptly upon (i) an interruption in the supply of electrical energy from the Seller's System; or (ii) the discovery of an emergency condition respecting the Seller's System. Buyer and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

7.02 Additional Facilities. If Buyer notifies Seller of its desire to interconnect additional facilities to Seller's System, Seller hereby agrees promptly either (i) to enter into amendments to this Agreement necessary to provide for the necessary changes to Seller's System to allow it to serve additional facilities, or (ii) enter into a separate agreement (with Buyer or Buyer's designee) on substantially the same terms as this Agreement to provide for Seller's System to serve the additional facilities. Any such designee of Buyer shall be an Additional Customer for the purposes of this Agreement. Any adjustments to Payments, rates or charges as a result of Buyer requesting to interconnect additional facilities will be consistent with the terms of pricing of this Agreement and open book.

7.03 Expansion of Seller's System Upon Buyer's Request. Seller shall, upon Buyer's reasonable request and subject to the additional provisions set forth herein, expand or alter Seller's System to provide additional hot water, chilled water or electricity to serve existing or new facilities. The Parties shall collaborate on the design of any such expansion or alteration. Promptly following any such request by Buyer, the Parties shall negotiate in good faith such amendments to this Agreement, or such further agreements, as may be required in connection therewith, including appropriate adjustments to any Payments, rates or charges set forth in Schedule 8 in order to compensate Seller for costs associated with the design, construction, financing and operations and maintenance of Seller's System, as expanded. Any adjustments to Payments, rates or charges as a result of an expansion of Seller's System will be consistent with the terms of pricing of this Agreement and open book.

7.04 Solar Insolation. Buyer understands that unobstructed access to sunlight for Solar ("Insolation") is essential to Seller's performance of certain of its obligations and a material term of this Agreement. Buyer shall not in any way cause and, where possible given the actual legal and contractual rights possessed by Buyer, shall use commercially reasonable efforts to not permit any material interference on the Project Site with the Seller's System's Insolation (and any such interference, so long as directly attributable to Buyer, that results in material diminished Insolation shall be compensated to Seller pursuant to the method set forth in Schedule 18, which shall be reasonably agreed to by the parties). If Buyer has actual knowledge becomes aware of any activity or condition that will materially diminish the Insolation of the System, Buyer shall notify Seller promptly and shall reasonably cooperate with Seller in preserving the Seller's System's Insolation levels subject to the actual legal and contractual rights possessed by Buyer. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of Section 7.04 against Buyer solely with respect to the actual rights possessed by Buyer. Seller understands and accepts the risk that snow, ice, and large flocks of birds are common in the region of the Facility and that if the cooperation of the owner of the property is required (and such owner is not Buyer or an Affiliate of Buyer) to avoid or reduce any material diminishment of Insolation, Buyer's obligation with respect thereto shall be only to the extent of the legal and contractual rights of Buyer in connection therewith and without derogation to compensation that Seller is expressly entitled to pursuant to this Section 7.04.

ARTICLE VIII
DISPUTE RESOLUTION

8.01 Dispute Resolution.

(a) Commercially Reasonable Efforts. If a material dispute between the Parties arises out of or in relation to this Agreement, Seller's Representative and Buyer's Representative shall use commercially reasonable efforts to settle the dispute, controversy or claim. The Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If Seller's Representative and Buyer's Representative cannot resolve the dispute within ten (10) Business Days, the dispute shall be brought to each the Seller's CEO, on the one hand and/or the Buyer's County Administrator, on the other hand, in an attempt to resolve the dispute pursuant to the terms of this Section.

(b) Arbitration. If Buyer and Seller are unable to resolve the material dispute in accordance with Section 8.01(a) within thirty (30) days, or a period time mutually agreed to by the Parties, then, upon written notice by a Party to the other Party, all unresolved disputes, controversies or claims shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, incidental, punitive or exemplary damages, but shall have the authority to award actual damages and injunctive relief. In determining any matter, the arbitrator shall apply the terms of this Agreement without adding to, modifying, or changing the terms in any respect, and shall apply the laws of the State of New Jersey. All arbitration hearings shall be held at a place designated by the arbitrator(s) in Middlesex County, New Jersey. Arbitration shall be initiated by the Party making the claim by service of a demand notice for arbitration within one hundred and eighty (180) days of when the dispute, controversy or claim arises. Arbitration fees and costs, including reasonable attorneys' fees, shall be paid by the non-prevailing Party, as determined by the arbitrator.

8.02 Non-Interruption of Duties During Dispute. During resolution of any dispute under this Article VIII, except as otherwise expressly provided herein, Seller and Buyer shall each continue to perform all of their respective obligations under this Agreement without interruption or delay, unless the subject matter of the dispute is of such nature that this is not reasonably possible until the dispute has been fully resolved.

ARTICLE IX
PERMITS, SUBLEASE, APPROVALS AND EASEMENTS

9.01 Seller's Permits Required. Seller shall, at its own cost and expense, obtain (in accordance with Schedule 10) and maintain throughout the Term all Permits from all applicable Governmental Authorities, or other Persons, necessary for the construction and operation of Seller's System, except for those Permits required to be obtained by Buyer in accordance with Section 9.02 or required by Law to be in the name of Buyer, which shall be obtained and maintained by Buyer (in accordance with Schedule 11). Such Permits and easements may include, but are not limited to, federal, state, local and municipal environmental Permits and licenses, State of New Jersey siting and operating Permits, and local and municipal building code and zoning variances, where required. Buyer shall cooperate with Seller in obtaining and maintaining such

Permits and easements. Seller shall: (i) not commence construction or operation of Seller's System prior to receipt of all applicable Permits and easements required for the particular phase of construction or operation; (ii) abide by the terms and conditions of all such Permits and easements; (iii) operate Seller's System at all times in the manner required or permitted by such Permits and easements. Seller shall provide copies of all such Permits, licenses, approvals, easements and variances to Buyer promptly after receipt thereof by Seller.

9.02 Buyer's Permits Required. Buyer shall, at its own cost and expense, obtain (in accordance with Schedule 11) and maintain throughout the Term all Permits and easements from all applicable Governmental Authorities, or other Persons, necessary for the construction and operation of each Buyer's Facility, except for those Permits and easements required to be obtained by Seller in accordance with Section 9.01 and Schedule 10. Seller shall cooperate with Buyer in obtaining and maintaining such Permits and easements.

9.03 Sublease, Easements and Access.

(a) Sublease. The Parties understand and agree that to perform their duties and obligations under this Agreement, they must enter into the Sublease agreed to by the Parties. Pursuant to the Sublease and in accordance therewith, Buyer will lease the Leased Premises for the primary purpose of constructing the Central Energy Center. The Sublease shall be coterminous with this Agreement. Buyer and Seller shall execute and deliver the Sublease upon execution of this Agreement and the Sublease, or a memorandum of Sublease, shall be recorded with such related instruments as are necessary to effect the grant of the rights described therein.

(b) Easements. The Parties understand and agree that to perform their duties and obligations under this Agreement, Buyer shall provide Seller with the necessary easements as depicted in Schedule 15. Buyer shall be responsible for obtaining all necessary real property rights and easements for the development and construction of Seller's System, including rights for power lines, telecommunications, water lines (make-up and domestic), waste water lines, and sewer lines, whether on or off the Project Site; provided that Seller shall make reasonable adjustments in the location of such lines as necessary to facilitate Buyer's receipt of such property rights.

(c) Access. Buyer shall provide Seller with access throughout the Term to Seller's System and points of Interconnection related to the delivery of Services.

(d) Safety Requirements. Seller and its representatives shall at all times comply with Buyer's reasonable safety requirements when on the Project Site and in connection with the operation and maintenance of Seller's System. Seller shall safeguard all materials, equipment and other assets in Seller's possession in accordance with Prudent Industry Practice.

(e) Non-Interference. Seller's exercise of such rights and performance of its obligations hereunder shall not unreasonably interfere with Buyer's use and enjoyment of any Buyer's Facility and Seller shall at all times conduct its activities so as to minimize any disturbance to Buyer's use and enjoyment of Buyer's Facility.

(f) Indemnification. Seller's exercise of the rights granted to it pursuant to this Section shall be subject to Seller's indemnification obligations pursuant to Article XVII.

9.05 Title to Improvements Installed by Seller.

(a) Except as set forth in Section 9.05(b), Title to all Improvements, including trade fixtures, machinery, equipment and other personal property, installed by Seller on the Project Site shall be vested in and remain the property of Seller or Lender(s) unless and until transferred pursuant to Article XV.

(b) Title to Buyer's Thermal Interconnection Equipment installed by Seller, upon installation, shall be vested in Buyer, and thereafter shall be vested in and remain the property of Buyer.

9.06 Ingress and Egress. Buyer and Seller shall coordinate, in writing, reasonable rights of ingress to and egress from the Project Site for Seller and Seller's representatives for the development, construction, operation and maintenance of Seller's System as set forth in the Sublease. Such rights of ingress and egress shall not interfere with the operation of the College or Campus.

9.07 Construction Staging Areas. In addition to the Project Site, to the extent available, Buyer will provide Seller with such additional temporary space as may be reasonably required by Seller for lay down and staging areas during construction of Seller's System.

9.08 Parking. Up to the Final Facility Acceptance Date, Buyer shall make available to Seller, the operator of Seller's System and their contractors, subcontractors, vendors and suppliers sufficient parking for the vehicles of those persons developing, constructing and operating Seller's System. From and after the Buyer's Commercial Operation Date and during the remainder of the Term, Seller and its employees and agents shall utilize a site designated by Buyer for parking. In each case, such parking shall be at no charge to Seller, the operator of Seller's System and their various contractors and sub-contractors.

ARTICLE X
METERING DEVICES, INSPECTIONS AND ADJUSTMENTS

10.01 Meters and Devices by Seller. During the Term, Seller shall, at its sole cost, furnish, install, and maintain all Primary Billing Meters and other Meters required to measure, record and document the deliveries of the Energy Services and determine the rates and charges thereof payable by Buyer to Seller in accordance with Schedule 8 and Article XI of this Agreement.

(a) All Meters, associated equipment, technical specifications, the arrangement thereof and all calibration procedures, may be reviewed by Buyer prior to installation and at any reasonable time thereafter, upon written request. Buyer shall be entitled to metering data from the Meters at any time.

(b) All Meters shall be installed, operated and maintained by Seller in accordance with operating instructions provided by the meter device manufacturers and Prudent Industry Practices.

10.02 Installation and Maintenance of Check Meters by Buyer. Buyer shall have the option to install and maintain, at its own expense, check meters and associated equipment downstream of the Delivery Points in order to verify all Meter readings of Seller.

10.03 Seals on Primary Billing Meters. Seller's Primary Billing Meters, to the extent they include and require seals and can be sealed, shall be sealed and such seals shall be broken only by Seller and only when a Primary Billing Meter is to be inspected, tested, adjusted, repaired, or replaced. Buyer shall receive reasonable prior notice of any testing, inspecting or adjustment of Primary Billing Meters and shall have the right to be present at such events.

10.04 Periodic Calibration of Seller's Primary Billing Meters

(a) Seller shall calibrate Seller's Meters (but not Buyer's check meters), at least annually. Additional tests of Seller's Meters will be made by Seller (or, at Buyer's sole cost and expense, by such third party as Buyer shall designate to perform such additional tests) at any reasonable time upon request therefore by Buyer, which will not occur more than twice in any Operating Year. Seller shall notify Buyer not less than fifteen (15) Days in advance of such annual calibration and additional tests, and Buyer shall have the right to be present at any such test. If, as a result of such tests, a Meter is found to be defective or inaccurate, it will be promptly restored to a condition of accuracy or replaced by Seller at Seller's sole cost. If a third-party test of a Meter paid for by Buyer shows an error greater than plus or minus two percent (2.0%) for any Energy Services ("Meter Error"), Seller shall promptly reimburse Buyer for its reasonable out-of-pocket expenses in performing such audit and/or testing.

(b) In the event of a Meter Error, Seller shall make an adjustment to its records for the actual period during which inaccurate measurements were made, if that period can be determined to the mutual satisfaction of the Parties (for example, by meter readings available from Buyer's installed meter equipment or Seller's other installed instruments). If the period of inaccuracy cannot be determined, an adjustment will be made to fifty percent (50%) of the measured quantities from the readings of the defective Meter taken since the date of the last test of such Meter for which there was no Meter Error. The adjustments shall be either upward or downward to reflect the amount of Energy Services actually delivered, based on the Meters. Any correction in billing resulting from such adjustment in Meter records shall be made in the next Monthly bill rendered by Seller after the inaccuracy is discovered.

10.05 Failure of Primary Billing Meter. If a Primary Billing Meter completely fails to register any Energy Services delivered, the amount of Energy Services delivered during such period will be estimated based on the amounts previously delivered during similar periods under substantially similar conditions, unless meter readings are available from Buyer's installed meter equipment or Seller's other installed instruments, in which case such other meter readings will be used. Buyer may have its meters, if any, inspected and tested and shall give Seller notice of, and allow Seller to observe such tests and inspections, and shall provide Seller with the written results thereof.

ARTICLE XI
RATES, CHARGES AND BILLING

11.01 Payment for Energy Services. Subject to and in accordance with the terms hereof, Buyer shall pay Seller for Energy Services at the start of Buyer's Beneficial Use until the end of the Term as follows:

Part A: Regular Services

(a) Capital Recovery Charge (CRC). The Capital Recovery Charge set forth in Schedule 8 shall be made in equal Monthly installments and, for any period less than a complete Billing Month, such amount shall be adjusted on a pro rata basis, based on the number of days of Commercial Operation during such Billing Month, with the first payment due on the first day of the Month following the Commercial Operation Date. The CRC calculated amount may include costs associated with the installation of Carport Solar or Battery Energy Storage as appropriate. Buyer may pay an Early Payment Price, up to an amount not to exceed Sixteen Million Dollars ($16,000,000.00), at the discretion of the Buyer. Payment must be made within thirty (30) days of the execution of this Energy Services Agreement, and prior to the Seller's Financial Closing. If the Early Payment Price payment is made in accordance with the specifications described above, the Capital Recovery Charge shown in Schedule 8-A.1 will be adjusted to reflect the Early Payment Price payment and the exact amount of the payment will be shown in the list of adjustments and the Capital Recovery Charge total amount financed will be adjusted to reflect the payment made.

(b) O&M Charge. The Operations & Maintenance Charge will be the amount shown in Schedule 8 in year one and will escalate annually thereafter as described in Schedule 8.

(c) Energy Charge. Usage based charges, measured by the Primary Billing Meters, for all energy services delivered as defined in and based on Schedule 8 (the "Energy Charges"). Energy Charges shall not begin with Beneficial Use of the energy services before Final Completion of the Seller's System.

1. Electric Charges.

(i) CHP Electric Charge: The rate in $/kWh for CHP produced Electricity.

(ii) Grid Electric Charge: The rate in $/kWh charged by PSE&G as its grid charge at the time of billing as set forth in the PSE&G bill to Buyer for supplemental Electricity provided when the Central Energy Center cannot meet the total demand of the Campus.

2. Thermal Charges.

(i) Hot Water Rate in \$/MMBtu from the Central Energy Center.

(ii) Chilled Water Rate in \$/Ton-hr from Central Energy Center.

(d) Fuel. Seller shall procure the fuel for use at the Central Energy Center pursuant to the Fuel Procurement Process attached hereto as Schedule 14. Seller shall be responsible for the installation of the required natural gas line to the Central Energy Center and shall provide for the installation of separate gas Meters to measure and record gas delivered to the Central Energy Center. Seller shall pay for the natural gas delivered to the Central Energy Center.

Part B: Temporary Electric Power

(a) Capital Recover Charge (CRC). Costs associated with the installation of the infrastructure to support the temporary electric generating equipment and distribute to the assigned locations financed over a fourteen (14) month period.

(b) Monthly Operating Charge. The cost of labor to operate the installation on a monthly basis.

(c) Monthly Equipment Rental Charge. Rental charges as billed from the provider.

(d) Fuel and Maintenance Charge. Fuel consumed based on hours of operation, and the Maintenance Charge from the Equipment provider which includes a 2.5% markup.

(e) Fuel Delivery. Seller shall procure diesel fuel for the production of Temporary Electric Power on an as needed based and at market prices. Seller shall be responsible for the delivery of such diesel fuel and shall meter the fuel consumption for billing purposes.

11.02 Billing and Payments for Energy Services. Within ten (10) Days following the close of each Billing Month, Seller shall send Buyer a detailed invoice, consistent with Schedule 8, setting forth all charges for the Energy Usage rendered during such Billing Month, as well as any other amounts due to Seller under this Agreement. Payment of such invoice will be due and payable within thirty (30) Days of its billing date.

11.03 Delinquent Payments. Any payment not made when due pursuant to Section 11.02 shall bear interest at the Contract Interest Rate commencing on the due date of such payment.

11.04 Capital Recovery Charge is Unconditional, No Set-Off. So long as Seller has made Energy Services available to Buyer in an amount at least equal to seventy percent (70%) of the defined energy requirements over the immediately preceding twelve calendar Month period, and no Seller default has occurred, Buyer's obligations to pay the Capital Recovery Charge shall be absolute and unconditional, and the Payment shall not be withheld or subject to any set-off.

11.05 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the records of the other Party related to the billing of any payments due hereunder and to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Agreement. If any such examination reveals any inaccuracy of plus or minus ten percent (10%) in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be made (or, in the case of overpayments by Buyer, may be set-off against other payments to be made by Buyer or, at Buyer's request, shall be refunded by Seller), with interest at the Contract Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party within ten (10) Days after it receives an invoice from the other Party setting forth in reasonable detail the calculation of such adjustments.

11.06 Amounts Due on Days which are not Business Days. Any amount due and payable under this Agreement on a Day which is not a Business Day shall instead be due on the first Business Day following the Day it is otherwise due.

11.07 Change in Law.

(a) For purposes of this Section 11.07, a "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

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

ARTICLE XII
COORDINATION OF ACTIVITIES

12.01 Sharing of Information by Buyer and Seller. Buyer and Seller shall maintain open daily communications, which shall include meetings upon the request of either Party, to share information and ideas regarding the construction, operation and maintenance of Seller's System and Buyer's Facility. Among the items to be addressed by such communications are matters relating to the scheduling of maintenance and Buyer's expected Energy Services levels. Such forecasts will be provided for planning purposes only and shall not constitute a commitment to an activity or change of any kind.

12.02 Development of Operating Procedures. Not later than ninety (90) Days prior to Seller's Anticipated System Completion Date, Seller shall develop operating procedures with respect to Seller's System. The operating procedures shall serve as guidelines for the operations of Seller's System. Such procedures (a) shall not override any other provisions of this Agreement, (b) shall not create any new contractual obligations binding on either Party, and (c) shall not require Seller to change the design or construction of Seller's System. The procedures shall establish a means of continuous communication between Buyer and Seller. The procedures may include safety rules, regulations and plans, planning arrangements, information sharing, joint short-term and long-range planning arrangements for performing concurrent maintenance and improvements, emergency notification and response procedures for planned and unplanned outages and upsets in respect of Seller's System, and designation of decisional authority levels for responding to emergencies at Seller's System.

12.03 Temporary Loss Mitigation Plan. Buyer and Seller understand and agree that there may be limited periods during the Term when, for various reasons, Seller is unable to deliver Energy Services to Buyer's Facility and PSE&G is unable to supply adequate electricity sufficient to meet Buyer's Electric Load. Accordingly, for the purpose of mitigating the damages to both Seller and Buyer that might arise by reason of such Interruption of Service, Buyer and Seller agree that at least ninety (90) Days prior to Seller's Anticipated System Completion Date, designated representatives of Seller shall adopt, memorialize, and, thereafter, maintain, modify, and revise, as mutually agreed, a definitive plan (the "Temporary Loss Mitigation Plan") for mitigating such damages. The Temporary Loss Mitigation Plan will provide that if Seller becomes aware of or has reason to believe that there exist or are likely to exist such conditions and circumstances as will result in an Interruption of Service, procedures will be followed whereby Seller shall, at its earliest opportunity, notify Buyer of such conditions or circumstances and the potential impact on Seller's ability to deliver Energy Services. As soon as practicable upon the receipt of such notification, Seller and Buyer shall take such actions as are specified in the Temporary Loss Mitigation Plan, provided that such actions do not materially and adversely impact the operation of Buyer's Facility or Seller's equipment.

ARTICLE XIII
INSURANCE

13.01 Buyer's Insurance. Buyer shall obtain and maintain, through one or more policies, at its own expense, any and all applicable insurance to insure Buyer's Equipment beyond the delivery points of Buyer's Interconnection. Seller's Insurance shall not insure beyond the point of interconnection.

13.02 Seller's Insurance. Seller shall obtain and maintain, through one or more policies, at its own expense, the insurance policies set forth below (including such other types, amounts, deductibles and terms and conditions required to be maintained under the Project Documents or Seller's Credit Facilities) to cover all of Seller's activities in connection with the performance of this Agreement, the Project Documents or Seller's Credit Facilities throughout the Term, unless otherwise specified for a longer coverage period:

(a) Commercial general liability insurance covering Seller's operations, including products, completed operations, contractual liability coverage in limits of not less than $1 million per occurrence and $5 million annual aggregate combined single limit for bodily injury and property damage per event;

(b) Statutory worker's compensation insurance and employers' liability insurance in limits of not less than $1 million, per accident for bodily injury or disease covering Seller's employees;

(c) Business automobile liability insurance covering all owned and non-owned and hired vehicles used by Seller in connection with the performance of this Agreement in limits of not less than $5 million per occurrence combined single limit for bodily injury and property damage, including all statutory coverage for the location;

(d) "All-risk" property insurance covering Seller's System insuring all real and personal property at full replacement cost value including coverage for machinery breakdown, whether or not Seller's property is located at or on Buyer's Facility and shall include property in the care, custody and control of Seller for which Seller is responsible for insuring. Such coverage shall include earthquake limits of not less than $5 million, and $5 million for named windstorm coverage. The administration and application of any proceeds of the insurance under this <u>Section 14.02(d)</u> are set forth in the Sublease, which is hereby incorporated by reference; and

(e) Umbrella/Excess insurance covering General Liability, Business Automobile Liability and Employers' Liability for $5 million per occurrence and in the aggregate.

(f) Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor as set forth in the Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

(g) d) Professional Liability: Coverage with limits not less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

(h) Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors & Omissions (if project involves environmental hazards): Coverage with limits no less than $1,000,000 per occurrence or claim/$2,000,000 aggregate.

13.03 Seller's Builder's Risk Insurance. In addition to the policies set forth in Section 13.02, Seller shall obtain and maintain at Seller's expense, "Builder's Risk" insurance for Seller's System on an "all-risk" replacement-cost basis in a completed value form with extended coverage until Seller's System Completion Date, providing:

(a) property coverage for Seller's System, which insurance shall include coverage for removal of debris and shall insure the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of Seller's System, in a minimum amount equal to the total replacement value and whether or not such property is located at or on Buyer's Facility and shall include property in the care, custody and control of Seller for which Seller is responsible for insuring;

(b) earthquake limits of not less than $5 million, and $5 million for named windstorm;

(c) off-site coverage including contingent transit for property described in (a) above to insure the full replacement cost of values at risk, but with a limit not less than $2.5 million per occurrence; and

(d) identical coverage for operational testing and commissioning including coverage for machinery breakdown and other operation of Seller's System prior to Seller's System Completion Date, or whatever insurance policy or other definition is used.

13.04 Insurance Requirement. Seller shall cause its policies to, where possible, name Buyer, officials, employees, dully authorized representatives and volunteers as an additional insured (except on workers compensation and employers liability policies). Buyer and Seller shall assume responsibility for their own deductible amounts and losses in excess of policy limits for an insured loss. The policies maintained by Seller pursuant to this Article XIII shall (i) include Buyer and such affiliates and contractors of Buyer as Buyer reasonably determines as additional insureds as their interests may appear, (ii) provided that such insurance is primary without right of contribution from any other insurance which might otherwise be available to an insured Party, (iii) provided that in the event of any loss of payment under the policy, the insurer shall waive any rights of subrogation against an insured Party, and (iv) be maintained with reputable insurance companies with an A.M. Best rating of "A" and subject to the review and approval by Buyer. Loss deductibles applicable to insured perils shall be the responsibility of Seller.

13.05 Certificates of Insurance. Seller shall cause each insurance policy to name Buyer as a certificate holder and require that the insurer provide Buyer, upon issuance of the policy and upon each renewal of coverage, with certificates of insurance and complete policies: (a) evidencing Buyer as additional insureds on all of the above mentioned coverage, except workers compensation, and employers liability insurance, for all events connected with this Agreement; (b) stating that the above insurance is primary coverage to any other insurance that may be available to Seller; and (c) providing that Buyer's notice of cancellation, modifications or material change to any policy are in accordance with the insurance carrier's procedures. The purchase of appropriate insurance coverage by Seller or the furnishing of the certificate(s) of insurance and complete policies shall not release Seller from its respective obligations or liabilities under this Agreement.

ARTICLE XIV
PURCHASE OBLIGATIONS AND RIGHTS

14.01 Purchase Obligations and Rights. The Parties shall have the following rights and obligations in connection with any purchase and sale of Seller's System:

(a) Buyer's Purchase Obligations and Option during Term. Buyer may consider the following options to purchase Seller's System prior to the expiration of the Term:

i. Event Constituting Breach by Seller. Upon termination of this Agreement by Buyer as a result of an Event Constituting Breach by Seller, Buyer may elect to purchase Seller's System for a purchase price equal to the amount required in Schedule 16 Early Termination Values; and

ii. Extended Force Majeure. Upon termination of this Agreement by Buyer as a result of an Extended Force Majeure event, Buyer shall purchase Seller's System for a purchase price equal to the amount required in Schedule 16 Early Termination Value.

(b) Additional Purchase Rights and Options. In the event of termination or expiration of this Agreement for a reason other than set forth in Section 14.01(a), Buyer shall have the right to purchase or lease all or a portion of Seller's System at the greater of (a) the Early Termination Values, (b) the outstanding amount of debt financing of Seller on Seller's System or (c) Fair Market Value, and in accordance with the following procedures.

i. Buyer and Seller shall at all times be free to negotiate and agree upon the Fair Market Value of Seller's System, or the portion thereof subject to purchase, and, upon such agreement, such agreed upon amount shall be deemed the Fair Market Value for purposes hereof.

ii. In the event Buyer and Seller do not agree upon a Fair Market Value pursuant to subsection (i), Buyer and Seller each shall select an appraiser with experience and qualifications in the valuation of thermal energy and electric generation facilities to perform an appraisal based on the Fair Market Value of Seller's System (excluding the value of Seller's Leasehold).

iii. Such appraisers shall have significant experience and qualifications in the representation of investment banks or other financial institutions that are active in the project finance markets for thermal energy and electric generation facilities and have acted on behalf of such institutions in the valuation of facilities similar to Seller's System.

iv. Each appraiser shall be directed to complete the appraisal and deliver a copy thereof to each Party within sixty (60) Days of receipt of notice of appointment.

v. Each Party shall bear the cost of its own appraiser.

vi. If the higher of the two (2) appraisals is less than ten percent (10%) above the lower appraisal, the two (2) appraisals shall be averaged, and such average shall constitute the Fair Market Value. If the higher of the two (2) appraisals is ten percent (10%) or more above the lower appraisal, the two (2) appraisers shall nominate a third similarly qualified appraiser; provided, however, that, if either Party fails to appoint an appraiser within fifteen (15) Business Days after a written request to do so by the other Party, or if the two (2) appraisers fail to agree upon a third appraiser, then either Party may apply to the American Arbitration Association to make such appointment.

vii. In the event a third appraiser is required, such appraiser shall perform an appraisal of the same portion of Seller's System as the other appraisers valued. The appraisal shall be averaged with the two (2) prior appraisals to constitute the final appraised value. Unless the Parties agree otherwise, any third appraisal shall be made within sixty (60) Days of the appointment of such third appraisal and the expenses attendant shall be shared equally by Seller and Buyer.

viii. If any property is purchased at Fair Market Value pursuant to this Agreement, and any indebtedness or other obligations are assumed by Buyer or Buyer takes such property subject to such indebtedness or other obligations, the amount of the purchase price will be reduced by the indebtedness and obligations assumed or taken subject to (up to a maximum amount equal to Fair Market Value), and the property shall be transferred to Buyer free and clear of all debts, liens and encumbrances (except with respect to permitted encumbrances, including, but not limited to, utility easements of record) other than any lien and/or encumbrance for debt assumed by Buyer. If the indebtedness or other obligations associated with such property exceeds the Fair Market Value, Seller shall, prior to the transfer of the property contemplated by this sentence, repay such indebtedness and other obligations in an amount equal to the positive difference between the aggregate amount owed and Fair Market Value.

ix. In the event Buyer elects to purchase the Seller System as set forth above, Buyer and Seller shall negotiate in good faith for Seller to continue maintaining the Seller System on customary commercially reasonable terms.

(c) Terms of Sale. If Buyer is required to, or elects to, purchase all or any portion of Seller's System pursuant to this Section 14, the Parties agree to negotiate in good faith the terms and conditions of the sale, to the extent not provided herein, and endeavor to consummate the sale as soon as practicable after Buyer's obligation to purchase Seller's System arises.

14.02 Transfer of Seller's System to Buyer. If Buyer purchases all of Seller's System pursuant to Section 14.01, then Seller shall complete all Required Transfer Actions (as required by Article XV) in exchange for payment, if any, by Buyer to Seller of the purchase price in funds consisting of lawful currency of the United States of America. sales tax, if any, on such purchase shall be paid by Buyer, and all other taxes, if any, due and owing in connection with Seller's Interconnection Facilities or Seller's System shall be apportioned between Buyer and Seller as of the date of the delivery of the deed and bill of sale on the basis of each Party's respective period and percentage of ownership as relates to said taxes.

14.03 Abandonment of Seller's System. Subject to the Sublease, Seller may request permission from Buyer to abandon Seller's System, in place on the Project Site and at Buyer's Facilities upon the expiration of the Term or earlier termination of this Agreement. Buyer shall be entitled to withhold or grant such permission, which may be subject to conditions imposed by Buyer, in its sole but reasonable discretion. Conditions imposed may include that Seller assign to Buyer any then existing warranties with respect to Seller's System and deliver possession and title to Seller's System(s) to Buyer free and clear of liens and encumbrances. If permission is granted, in writing, by Buyer, and Seller complies with all conditions imposed by Buyer, Seller may abandon such property in place, in as-is, where-is condition. Upon Buyer's acceptance of possession and title in connection therewith, Seller shall have no remaining obligations with respect to such property (other than obligations incurred through such date), it shall have no obligation to remove such property from Buyer's Facilities.

14.04 Survival of Article. This Article XIV shall survive termination of this Agreement.

14.05 Rights of Lenders. To the extent that Lender(s) assume Seller's rights and obligations under this Agreement, Lender(s) shall have the same rights and obligations as Seller under this Article XIV.

ARTICLE XV

REQUIRED TRANSFER ACTIONS UPON PURCHASE OF SELLER'S SYSTEM BY BUYER

15.01 Required Transfer Actions. If pursuant to the provisions of this Agreement, Buyer purchases Seller's System, Seller shall, subject to the terms of Seller's Credit Facilities, use its commercially reasonable efforts to take the following actions (collectively, the "Required Transfer Actions"):

(a) Seller shall take all actions reasonably necessary to convey Seller's System to Buyer, documentation of which shall be in form and substance reasonably satisfactory to both Parties;

(b) Seller shall assign to Buyer its interest in all purchase orders, contracts, Project Documents, power sales, gas purchase and gas transportation contracts and other agreements (in each case, to the extent requested by Buyer and solely as permitted by such agreements and documents) that relate to the portion of Seller's System (or the development, design, construction, engineering, procurement, operation or maintenance thereof) being purchased; provided that, Buyer's right to request assignment of certain contracts shall not be read as an obligation by Buyer to assume all or any of those contracts or of Seller's ability to assign any such contracts if such contract is not assignable; provided further that, Buyer shall assume the payment, including breakage fees and other costs associated with such assignment, and performance of all such contracts assigned to it and shall release, indemnify, and hold harmless Seller from any liabilities or obligations under such assigned agreements due to events arising after such assignment;

(c) Seller shall exercise Reasonable Efforts in negotiating the terms of the Project Documents to include in such documents written consent to the assignment by Seller of its rights therein to Buyer, and the term of each Project Document shall expire not later than the Term, without the prior written consent of Buyer;

(d) Seller shall assign, convey and deliver (or cause to be assigned, conveyed and delivered) to Buyer, to the extent it has such items in its possession and may lawfully assign, convey and deliver them, all warranties and guaranties, originals of all design and development documents, all estimates, plans, specifications, drawings (including, without limitation, all shop drawings, "as-built" mylar drawings), manuals and records, past and present, all other information, as well as all associated computer files, in each case, relating to the portion of Seller's System (or the development, design, construction, engineering, procurement or operation thereof) being purchased or any part thereof, and assign to Buyer, if legally assignable and at Buyer's expense, its interest in all necessary proprietary information, licenses and equipment relating to the portion of Seller's System being purchased, together with a non-exclusive, royalty-free license to all intellectual property rights related to the foregoing;

(e) Seller shall assign, convey and deliver to Buyer good, valid and marketable title to any real property interests acquired by Seller or any of its Affiliates in connection with Seller's System or constituting a portion of Seller's Leasehold, or any options, or other rights to any such real property interests to the extent they relate directly to Seller's System on the Project Site;

(f) Seller shall assign, convey and deliver to Buyer all equipment, supplies, materials, assets and property purchased, acquired or developed by Seller or any Seller's contractor in connection with or relating to the development, design, construction, engineering and provision of any other services solely for Seller's System, together with a non-exclusive, royalty-free license to all intellectual property rights related to the foregoing;

(g) Seller shall remove all Seller and Seller's contractor personnel from Seller's Leasehold and agrees that, subject to clause (i) below, such personnel shall have no further access to Seller's Leasehold;

(h) At Buyer's election, Seller shall make its operations personnel available to train and assist Buyer's personnel or contract operators for a period of up to two (2) months prior to Buyer's takeover of the portion of Seller's System being purchased; and

(i) At any time or from time to time upon the reasonable request of Buyer, Seller shall promptly execute, acknowledge and deliver such further documents, agreements, instruments, endorsements, power of attorney or notices, and do such other acts and things as Buyer may reasonably request in order to effect fully the purposes of this Article XV.

15.02 Survival of Article. This Article XV shall survive the termination or expiration of this Agreement.

ARTICLE XVI
FORCE MAJEURE

16.01 Force Majeure Generally. If either Party shall be unable to carry out any of its obligations under this Agreement, in full or in part (other than the payment of moneys owed hereunder), due to an event of Force Majeure, this Agreement shall remain in effect, but the affected Party's obligations, except to the extent provided in Section 16.03, shall be suspended during such Force Majeure; provided, however, that:

(a) the non-performing Party (i) gives the other Party prompt written notice in accordance with this Section 16.01 no later than five (5) Business Days from the date of the non-performing Party first obtaining knowledge of the event(s) constituting Force Majeure, describing the particulars of the Force Majeure, including, but not limited to, the nature of the occurrence and its expected duration, (ii) continues to furnish timely regular written reports, at least once weekly, with respect thereto during the period of Force Majeure, and (iii) provides prompt written notice of the termination of the Force Majeure event;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(c) no obligations of either Party that arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure;

(d) the non-performing Party uses Reasonable Efforts to remedy its inability to perform and to mitigate, in an expeditious manner, any losses to the other Party, which such Party could not, with the exercise of Reasonable Efforts, avoid;

(e) the Force Majeure event is not otherwise specifically addressed by other provisions of this Agreement;

(f) the Force Majeure event is not otherwise due to the acts or omissions of the Party relying on such Force Majeure; and

(g) economic hardship, including changes in the economics of constructing, financing or operating Seller's System, any Buyer's Facility or Buyer's Equipment, or tax laws and/or loss of profits, shall not constitute Force Majeure.

16.02 Extended Force Majeure. Upon the occurrence of an Extended Force Majeure and Seller or Lender(s)' inability to cure such Extended Force Majeure as set forth herein within the time set forth in this Section 16.02, Buyer shall be entitled to terminate this Agreement. Buyer shall provide written notice to Seller and Lender(s) of Buyer's intent to terminate for an Extended Force Majeure. Seller or Lender(s) shall have six (6) months from the date of Buyer's written notice to return Seller's System to service. If at the end of such six (6) month period the Extended Force Majeure shall still continue, this Agreement shall automatically terminate. Upon such termination for an Extended Force Majeure, Buyer shall have the obligations set forth in this Article XVI.

16.03 Continued Provision of Energy Services During Force Majeure. In the event of, and during the continuance of, a Force Majeure that occurs after Buyer's Commercial Operation Date, which prevents Seller from adequately supplying Electricity to meet Buyer's Electric Load from Seller's System, (i) Buyer will automatically receive electricity from PSE&G, and (ii) Buyer shall obtain Thermal Energy from its own equipment as set forth in Section 6.05.

16.04 Force Majeure Prior to Facility Acceptance. If a Force Majeure event occurs prior to Buyer's Commercial Operation Date, Seller's obligations hereunder shall be deferred for the duration of the Force Majeure event, and any schedules or time limits hereunder, including Seller's Anticipated System Completion Date and the Project Schedule, shall be extended for the duration of the Force Majeure event. Seller's failure to meet Seller's Anticipated System Completion Date or any other time requirement hereunder as a result of Force Majeure shall not be an Event Constituting Breach.

ARTICLE XVII
INDEMNIFICATION

17.01 Indemnification General. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Sections 3.01, 3.02, 3.03 or 3.04 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the

Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17.01 however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17.03.

17.02 Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.02 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.02 for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

17.03 Limitations on Liability.

(a) No Consequential Damages. Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (i) in the event that any Tax Credits attributable to the Seller's System are subject to recapture solely as a result of a breach of this Agreement by Buyer and recaptured as evidenced by the taxpayer on its tax return for recapture as a result such breach by Buyer, such recaptured amount shall be deemed to be direct and not indirect or consequential damages suffered by Seller (even if such Tax Credits have been transferred to Seller's upstream owners or any third party), and (ii) in the event that Seller is retaining its forty percent (40%) of the Environmental Attributes or Incentives produced by the Seller's System, and a breach of this Agreement by Buyer solely causes Seller to lose the benefit of sales of such Environmental Attributes or Incentives to third parties, the amount of such losses shall be direct and not indirect or consequential damages.

(b) Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 17.01 and damages that result from the willful misconduct of Seller, neither Party's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall exceed the total payments made (or, as applicable, projected to be made) under this Agreement. The provisions of this Section 17.03(b) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.

ARTICLE XVIII
EVENTS CONSTITUTING BREACH

18.01 Events Constituting Breach by Buyer. The occurrence of any of the following shall constitute an "Event Constituting Breach" by Buyer:

(a) Any payment required to be made by Buyer to Seller hereunder is not made when due and remains unpaid for sixty (60) calendar days, however, that this provision shall not apply when Buyer's nonpayment is based upon a good-faith dispute as to an invoice from Seller and is limited to the amount in dispute (it being understood and agreed to by the Parties that any dispute as to the requirements to make monthly payments shall be resolved as provided in Section 11).

(b) Any material representation or warranty made by Buyer in this Agreement is discovered to have been false or misleading in any material respect when made and such representation or warranty (i) continues to be false or misleading for a period of thirty (30) Days after written notice to that effect to Buyer and (ii) is material at the time that an Event Constituting Breach pursuant to this Section 18.01(b) is declared.

(c) Unless specifically addressed elsewhere in this Section 18.01, Buyer fails to perform any of its duties or obligations required by this Agreement and such failure continues and is not cured within sixty (60) Days after written notice thereof is received from Seller, unless the failure specified in such notice is not reasonably susceptible of a cure within such sixty (60) Day period, in which case, an Event Constituting Breach shall not occur under this Section 18.01(c) unless (i) Buyer fails to commence and continue with due diligence a cure for such failure within such sixty (60) Day period and (ii) the failure specified in such notice continues and is not cured within ninety (90) Days after the original written notice thereof from Seller.

(d) Bankruptcy of Buyer.

(e) There is an event of default by Buyer under the Sublease which is not cured within sixty (60) Days after written notice thereof from Seller.

(f) Buyer damages or interferes with Seller's System in a manner that materially adversely affects its operation and upon written notice thereof from Seller, fails to act within ten (10) Days, and thereafter, fails to continue to act with due diligence to repair, replace or remedy such damages or interferences to Seller's System within sixty (60) Days after written notice from Buyer. If Buyer damages or interferes with Seller's System, in addition to any other damages for which Buyer may be liable, Buyer shall pay Seller for all reasonable resulting repairs, replacements or modifications to Seller's System.

18.02 Events Constituting Breach by Seller. The occurrence of any of the following shall constitute an "Event Constituting Breach" by Seller:

(a) Any payment required to be made by Seller to Buyer hereunder is not made when due and such payment remains unpaid for ten (10) Days after written notice from Buyer; provided, however, that this provision shall not apply when Seller's nonpayment is based upon a good faith dispute as to an invoice from Buyer and is limited to the amount in dispute.

(b) Any material representation or warranty made by Seller in this Agreement is discovered to have been false or misleading in any material respect when made and such representation or warranty (i) continues to be false or misleading for a period of thirty (30) Days after written notice to that effect to Seller and (ii) is material at the time that an Event Constituting Breach pursuant to this Section 18.02(b) is declared.

(c) Unless specifically addressed elsewhere in this Section 18.02, Seller fails to perform any of its duties or obligations required by this Agreement and such failure continues and is not cured within sixty (60) Days after written notice thereof is received from Buyer, unless the failure specified in such notice is not reasonably susceptible of a cure within such sixty (60) Day period, in which case, an Event Constituting Breach shall not occur under this paragraph (c) unless (i) Seller fails to commence and continue with due diligence a cure for such failure within such sixty (60) Day period and (ii) the failure specified in such notice continues and is not cured within ninety (90) Days after the original written notice thereof from Buyer.

(d) Seller's System has been unable to provide Energy Services in an amount at least equal to seventy-five percent (75%) of the expected production of Electricity, Hot Water and Chilled Water by the Project over the immediately preceding twelve calendar Month period.

(e) Bankruptcy of Seller, and the rights under Sections 22.03 (c) or (d) have not been exercised.

(f) There is an event of default by Seller under the Sublease or any other Project Document that is not cured within sixty (60) Days after written notice thereof (unless a longer cure period is provided for in such agreement) and as to which Lenders have not given a "Nullification Notice" (as such term is defined in the Sublease) to Buyer pursuant to the provisions of the Sublease.

(g) Seller damages or interferes with any Buyer's Facility (which includes Buyer's Equipment) in a manner that materially and adversely affects its operation and, upon written notice thereof from Buyer, fails to act within ten (10) Days, and thereafter fails to continue to act, with due diligence to repair or cure such damages or interferences to any Buyer's Facility within sixty (60) Days after written notice from Buyer. If Seller damages or interferes with a Buyer's Facility, in addition to any other damages for which Seller may be liable, Seller shall pay Buyer for all reasonable resulting repairs, replacements or modifications to such Buyer's Facility.

ARTICLE XIX
REMEDIES UPON BREACH

19.01 Remedies of Seller.

(a) Upon the occurrence of an Event Constituting Breach by Buyer and Seller is not then in default hereunder, Seller may terminate this Agreement and exercise any and all other rights or remedies available to it at law or at equity, all as limited by this Section 19.01; provided, however, that Seller may not suspend Energy Services upon the occurrence of an Event Constituting Breach by Buyer except for the occurrence of an Event Constituting Breach under Section 18.01(a) or (d) in which case Seller may (i) suspend performance under this Agreement only upon thirty (30) Days' prior notice to Buyer and (ii) at the expiration of such thirty (30) Day notice period, simultaneously pursue all available remedies at law or equity. In the event Seller terminates this Agreement in accordance with this Section 19.01(a), Buyer shall purchase Seller's System at Seller's Cost, in which event, Seller shall convey Seller's System to Buyer in accordance with the requirements of Article XIV and the other Required Transfer Actions at Buyer's cost. No remedy granted to Seller is intended to be exclusive of any other remedy herein or available at law or equity, but each shall be cumulative and may be exercised independently by Seller.

(b) Upon the occurrence of an Event Constituting Breach by Buyer that is based on Buyer's non-compliance with its covenants with respect to Buyer's Equipment as set forth in Section 3.04(d), if Seller determines that such nonconformity requires the expenditure of funds by Seller on Seller's System, Seller shall submit Cost Substantiation to Buyer along with a demand for payment of costs reflected in the Cost Substantiation. Buyer shall pay the same within thirty (30) Days of receipt of Cost Substantiation, along with interest at the Contract Interest Rate, which interest shall accrue from the date payment is due.

(c) Upon the occurrence of an Event Constituting Breach by Buyer specified in Section 18.01(f), if Seller determines that such event requires the expenditure of funds by Seller on Seller's System, Seller shall submit Cost Substantiation to Buyer along with a demand for payment of costs reflected in the Cost Substantiation. Buyer shall pay the same within thirty (30) Days of receipt of Cost Substantiation, along with interest at the Contract Interest Rate, which interest shall accrue from the date payment is due.

(d) No remedy granted to Seller is intended to be exclusive of any other remedy herein or available at law or equity, but each shall be cumulative and may be exercised independently by Seller.

19.02 Remedies of Buyer.

(a) Upon the occurrence of an Event Constituting Breach by Seller specified in Section 18.02(g), if Buyer determines that such event requires the expenditure of funds by Buyer on Buyer's Facility, Buyer shall submit Cost Substantiation to Seller along with a demand for payment of costs reflected in the Cost Substantiation. Seller shall pay the same within thirty (30)

Days of receipt of Cost Substantiation, along with interest at the Contract Interest Rate, which interest shall accrue from the date payment is due.

(b) Upon the occurrence of an Event Constituting Breach by Seller, Buyer shall have the right to pursue any and all remedies available at law or in equity, including the right to terminate this Agreement. Buyer may only exercise its right of termination under this Section 19.02(b) after: (i) Buyer has given Seller and Lenders written notice of its intent to terminate; and (ii) Seller or Lenders shall have had reasonable opportunity (but no more than ninety (90) Days, unless another period is expressly provided herein) to remedy the breach.

19.03 Survival. This Article XIX shall survive termination of this Agreement.

ARTICLE XX
ENVIRONMENTAL MATTERS

20.01 Buyer's Representations and Warranties. Except as disclosed on Schedule 12 or in an Environmental Report provided to Seller prior to the Effective Date, to the best of Buyer's knowledge, information and belief:

(a) Neither Buyer nor the owner of the Project Site has used Project Site for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, Release, discharge or disposal of any Hazardous Materials, except in the ordinary course of such business and in material compliance with Environmental Laws;

(b) Neither Buyer nor the owner of the Project Site has placed, deposited or permitted to exist, any Hazardous Materials in, on or under Project Site, except in material compliance with Environmental Laws;

(c) Neither Buyer, owner or any party on their behalf has arranged for the transportation or disposal of any Hazardous Materials on or under Project Site;

(d) No (A) asbestos or asbestos-containing materials, (B) machinery, equipment or fixtures containing PCBs, (C) underground storage tanks or other storage tanks used for the storage of gasoline or any other Hazardous Materials, or (D) urea formaldehyde foam insulation, has been installed, used, stored, handled or located by Buyer on the Project Site except in material compliance with Environmental Laws;

(e) Buyer and/or the owner of the Project Site each is in compliance with all Environmental Laws and holds, or has applied for, all permits, licenses, clearances and consents required under any Environmental Law, except where such failure to be in compliance would not have a Material Adverse Effect on Seller, Seller's System or Seller's abilities to perform its obligations hereunder;

(f) No written or oral notice has been given to Buyer or the owner of the Project Site by any Governmental Authority or any Person alleging a violation of any Environmental Law or other liability or responsibility related to Hazardous Materials used, generated, processed, manufactured, stored, handled, treated, Released, discharged or disposed by Buyer or owner regarding, referring or relating to Project Site; and

(g) No actions, suits, claims, arbitrations, grievances, complaints, charges, proceedings or investigations have been commenced or threatened concerning a violation of any Environmental Law or other liability or responsibility related to Hazardous Materials used, generated, processed, manufactured, stored, handled, treated, Released, discharged or disposed by Buyer or owner or any predecessor of Buyer or owner.

20.02 Hazardous Materials. Each Party acknowledges and agrees that it shall not treat or dispose of any Hazardous Material on or below Project Site except in accordance with Schedule 13 and applicable Environmental Law, and shall not handle, treat or store any Hazardous Materials in a manner such that Seller's System becomes a "treatment, storage or disposal facility" as those terms are used in the Solid Waste Disposal Act or other Environmental Laws. Each Party shall properly dispose of Hazardous Materials generated at or on Project Site and each may accumulate and store such Hazardous Materials in quantities not to exceed those allowed under Applicable Laws and regulations prior to off-site treatment, storage, or disposal when such Hazardous Materials are generated on Project Site. Each Party may store commercial products purchased for use on-site which may contain Hazardous Materials so long as such storage, including notification and permitting, complies with any applicable Environmental Law. The Parties shall have the responsibilities and follow the procedures set forth in the Hazardous Materials Protocol, Schedule 13 of this Agreement. To the extent that Seller's performance hereunder is delayed by the presence of any Hazardous Materials, such delay shall not be considered an Event Constituting Breach by Seller.

20.03 Each Party shall identify an Environmental Contact, which may be changed upon ten (10) days written notice (including name, telephone number, address, email, and twenty-four (24) hour contact method) to the other Party. The Parties' Environmental Contacts shall be:

Buyer's Environmental Contact

Name:
Title:
Address:
E-Mail:
Office Phone:
24 Hour Contact:

Seller's Environmental Contact:

Name:
Title:
Address:
E-Mail:

Office Phone:
24 Hour Contact:

20.04 Transfer of Seller's Leasehold. Seller agrees that any contract or sublease executed by Seller for transfer of possession in whole or part of Seller's Leasehold to any successor, assign, or tenant shall incorporate the obligations set forth above in this Article XX and that these obligations shall bind any successor, assign, or tenant.

20.05 Indemnification; Responsibility.

(a) Except as specifically addressed in Section 20.05 with respect to Pre-Existing Environmental Conditions, Seller shall indemnify and hold harmless Buyer from and against any and all liabilities, damages, penalties, orders, complaints, or fines (including, without limitation, reasonable costs of investigation, remediation or response, removal or corrective action, and reasonable attorneys' fees, but in no event consequential damages such as, by way of example and not limitation, loss of use, profits or business opportunity) (collectively, "Hazardous Material Indemnification Claims") arising from, out of, by reason of, or relating to: (i) a breach by Seller of its representations, warranties or covenants in this Article; (ii) any Release of a Hazardous Material caused by Seller, its agents, contractors or employees; (iii) off-site treatment, storage, disposal, cleanup or remediation associated therewith, of Hazardous Material which originated from Seller's System; or (iv) the violation of any Permit (including the Air Permit) caused by Seller.

(b) Buyer shall be responsible for any and all liabilities, damages, penalties, orders, complaints, or fines (including, without limitation, reasonable costs of investigation, remediation or response, removal or corrective action, and reasonable attorneys' fees, but in no event consequential damages such as, by way of example and not limitation, loss of use, profits or business opportunity) suffered by Seller and arising from, out of, by reason of, or relating to: (i) Pre-Existing Environmental Conditions as set forth in Section 20.05; (ii) a material breach by Buyer of its representations, warranties or covenants in this Article; (iii) any Release of a Hazardous Material caused by Buyer, its agents, contractors or employees; (iv) off-site treatment, storage, disposal, cleanup or remediation associated therewith, of Hazardous Material which originated from Buyer; or (v) the material violation of any Permit related to the project (including the Air Permit) caused by Buyer.

(c) The right of indemnification or to assert a claim set forth in Section 20.04(a) or (b) (collectively an "Environmental Claim") shall be subject to the following terms and conditions:

i. The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment giving rise to potential liability under any applicable Environmental Law.

ii. A Party shall, upon discovery of either a Release of Hazardous Material or a potential Pre-Existing Condition, such Party shall follow the notification procedures set forth on Schedule 13 or, to the extent not addressed in Schedule 13, promptly (within twenty-four (24) hours) verbally notify the other Party's Environmental Contact, followed by prompt (within ten (10) Business Days from the date of discovery) written notification describing the situation and any actions the Party took to contain any suspected Hazardous Materials.

iii. A Party, upon discovery of any such Release or potential Pre-Existing Condition shall, if required by applicable Environmental Law, properly notify the appropriate Governmental Authority and shall simultaneously, or as soon as possible after notifying the appropriate Governmental Authority, inform the other Party that it has notified such authority.

iv. In the event of a dispute regarding the origin of or responsibility for any Release of a Hazardous Material, the Parties shall attempt to resolve such dispute through negotiation. If the Parties are unable to agree upon the origin of the Release, then the Parties may hire a mutually agreeable independent environmental consultant to mediate the dispute either by determining the origin of the Release or by apportioning responsibility between the Parties. The consultant's decision shall not be binding upon the Parties. The costs incurred in hiring the consultant in this resolution process shall be borne by the Party determined to be primarily responsible (i.e., greater than 50%). The Parties acknowledge and agree that the contract under which the consultant may be hired shall clearly state that the consultant is being hired only to resolve the dispute related to the origin of the Release of a Hazardous Material, and in no event will the consultant be retained by either Party to conduct any resulting remediation, cleanup or other work relating to the Release. Following identification of the origin of any such Release, the Party responsible or determined to be responsible by the consultant (unless disputed in good faith) for such Release shall investigate the Release and remediate or undertake cleanup as required under all applicable Environmental Laws. If a Party refuses to participate in the mediation by an independent environmental consultant, then either Party may refer the matter to the Dispute Resolution Process.

v. The Parties shall provide each other with copies of any data, results, or reports and any correspondence with any Governmental Authority regarding any such Release.

vi. A Party shall not be obligated to the other pursuant to this Section 20.04; (A) to the extent such Party's rights are materially prejudiced by the failure of the other Party to notify the obligated Party as provided in this Section 20.04(c), or (B) if the other Party has negotiated and/or agreed to remediate or settle a claim for which indemnification or compensation is sought without the prior written approval of the obligated Party.

vii. If a Release of a Hazardous Material results in an Environmental Claim, and provided all of the obligations of the obligated Party have been fulfilled as required by this Section 20.04, the obligated Party shall, to the extent permitted by law and upon written notice of such claim as required by this Section 20.04, undertake the defense of the other Party by attorneys and/or environmental consultants reasonably acceptable to the other Party.

viii. If the obligated Party, within a reasonable time after notice of such claim for indemnification, fails to defend such claim, the other Party shall have the right to undertake the defense, compromise, or settlement of such claim on behalf of and for the account of the obligated Party, which may include, but is not limited to, expenses (including attorneys' fees) and liabilities of the other Party as well as any money damages or other money payments resulting from the defense, compromise, or settlement of such claim; provided, however, the obligated Party shall have the right, upon advance written notice, to assume the defense of such claim prior to a settlement, compromise, or final resolution thereof, but such assumption shall not relieve the obligated Party of any costs incurred by the other Party up to the date of such assumption.

ix. Each Party agrees that any contract for transfer of possession in whole or part of its real property through sublease, or other voluntary disposition shall incorporate the obligations set forth above in this Section.

20.06 Pre-Existing Environmental Conditions. The Parties agree that as between the Parties, as to any Pre-Existing Environmental Conditions, and subject to Seller's compliance with the Hazards Material Protocol in Schedule 13, (i) Seller shall bear no responsibility for Pre-Existing Environmental Conditions; (ii) Buyer shall not assert any claim against Seller for such Pre-Existing Environmental Conditions; (iii) Buyer shall be responsible for any and all Environmental Claims arising from, out of, by reason of, or relating to any Pre-Existing Environmental Conditions; (iv) Buyer shall bear all responsibility for any Environmental Claims from or as a result of Pre-Existing Environmental Conditions; (v) Buyer shall properly investigate and remediate under the oversight of a Licensed Site Remediation Professional and in accordance with applicable law any Pre-Existing Environmental Conditions that are known or that are discovered at any time during the Term to the extent that there is an adverse impact to the project; and (vi) to the extent that Seller's performance hereunder is delayed by the presence of any Pre-Existing Environmental Conditions, such delay shall not be considered an Event Constituting Breach by Seller.

(a) Seller's Environmental Investigation. Seller shall provide Buyer with a copy of any and all reports documenting the results of Seller's Environmental Investigation within ten (10) Days of Seller's receipt of same from the environmental consultant conducting Seller's Environmental Investigation.

20.07 Survival. The Parties agree that Sections 20.04 and 20.05 shall survive the expiration or termination of this Agreement.

20.08 Air Permit.

(a) Seller has been designated as the "operator" on the Air Permit Application and shall be designated as the "operator" on the Air Permit for the Term unless otherwise agreed to by Seller. Notwithstanding Seller's designation as the "operator" on the Air Permit, Seller shall only be responsible for the operation of Seller's Emitting Equipment, including compliance with the Air Permit. Buyer's Emitting Equipment shall be Buyer's sole responsibility, and Seller shall have no liability or responsibility related to Buyer's Emitting Equipment, including compliance with the Air Permit.

(b) Seller shall be solely responsible for complying with any reporting requirements under the Air Permit, including any reporting related to Seller's Emitting Equipment. Seller, at Seller's expense, shall cooperate with Buyer and provide any information about Seller's Emitting Equipment necessary to comply with any reporting requirements related to the Air Permit.

(c) Upon issuance of the Air Permit, Buyer shall not modify, withdraw, change, amend, alter, or request any modification of the Air Permit as it relates to Seller's Emitting Equipment during the Term without prior notice to Seller and Seller's consent, including, but not limited to, any change to the Air Permit that will: (i) have a Material Adverse Effect on Seller's ability to comply with the Air Permit; or (ii) decrease the emission limits applicable to Seller's Emitting Equipment. If an expansion or alteration of Seller's System under Section 4.02(a) requires a modification to the Air Permit, Seller shall pay for all costs reasonably incurred by Buyer or Seller to obtain the Air Permit modification.

(d) At any time during the Term, Seller may, at Seller's sole discretion, apply to EPA to either (i) modify the Air Permit as it relates to Seller's Emitting Equipment or (ii) apply for a separate air pollution control operating permit (a "Separate Operating Permit") for Seller's Emitting Equipment. Buyer shall cooperate with Seller, at no out-of-pocket cost to Buyer, in obtaining any such modification or Separate Operating Permit, including, if necessary, filing any application or notice required under Applicable Law or amending or otherwise modifying the Air Permit. If EPA does not issue a Separate Operating Permit to Seller, then the Parties agree to continue to operate Seller's Emitting Equipment and Buyer's Emitting Equipment under the Air Permit pursuant to Sections 20.08 (a) and (b) above.

ARTICLE XXI
NOTICES

21.01 Notices. Except as otherwise specifically provided for in this Agreement, all notices, waivers or other communications required or permitted hereunder will be in writing and will be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, (iii) electronic mail, or (iv) sent by overnight express carrier, addressed in each case as follows:

Seller:
Gary Fromer
CEO
5429 Harding Highway, Building 500
Mays Landing, NJ 08330
gfromer@dcoenergy.com

With a copy to:
Glenn Clouser, Esq.
General Counsel
100 Lenox Drive, Suite 100
Lawrenceville, NJ 08648
gclouser@jingoli.com

Buyer :

With a copy to:

or to any other address as to any of the Parties, as such Party shall designate in a written notice to the other Party. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next Business Day immediately following the Day sent, (iii) if sent by electronic mail, then upon confirmation of receipt by the receiving party, or (iv) if sent by registered or certified mail, then on the earlier of the third Business Day following the Day sent or when actually received.

ARTICLE XXII
NON-WAIVER

No provision of this Agreement shall be considered waived by either Party unless such waiver is given in writing and duly executed by the Party giving the waiver. Any waiver shall be effective only in the specific instance and for the specified purpose for which it is given. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provision or the relinquishment of any such right or any other rights hereunder, but the same shall continue and remain in full force and effect.

ARTICLE XXIII
ASSIGNMENT

23.01 General. Except as provided in this Article XXIII, this Agreement may not be assigned by either Buyer or Seller without the prior written consent of the other. Any assignee (other than a Lender, as collateral assignee), pursuant to this Article XXIII, shall expressly assume and agree to perform the assigning Party's obligations hereunder, unless agreed to by the other Party. No assignment, whether or not consented to, shall relieve the assigning Party of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assigning Party's continuing obligations pursuant to this Agreement. Any assignment in violation of this Article XXIII shall be null and void and shall constitute an Event Constituting Breach by the assigning Party.

23.02 Seller Financing Assignments. Seller may collaterally assign its right, title and interest in and to this Agreement for financing purposes (but it shall not assign its obligations under this Agreement) to Lenders; provided, however, that such collateral assignment shall recognize Buyer's rights under this Agreement. If Seller shall collaterally assign this Agreement in accordance with this Section 23.02, then so long as any such collateral assignment, or any consolidation, modification or extension of any such collateral assignment, shall remain outstanding, the following provisions shall apply (each of which shall be evidenced in a consent and agreement among Buyer, Seller and Lenders with such changes as Buyer shall reasonably require (the "Lenders Consent")):

(a) Provided that Buyer shall have received prior written notice of such collateral assignment, Buyer shall, upon serving upon Seller any notice of default pursuant to any provision of this Agreement, also serve a copy of such notice upon the collateral assignee under the collateral assignment, at the address provided in the Lenders Consent. No notice of Seller's default hereunder shall be deemed to have been duly given by Buyer unless and until a copy thereof shall have been so served;

(b) From and after the date that such notice of default has been given to a collateral assignee, such collateral assignee shall have the periods specified herein in Sections 18.01 and 18.02 from receipt of the applicable notice of default to effect a cure of such default. Buyer shall accept such performance by or on behalf of such collateral assignee as if the same had been performed by Seller. Neither Seller nor Buyer shall interpose any objection if any collateral assignee takes such action or enters Seller's System for such purpose;

(c) The making of a collateral assignment pursuant to this Section 23.03 shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any collateral assignee, as such, be deemed to be an assignee or transferee of this Agreement so as to require such collateral assignee, as such, to assume the performance of any of the obligations which Seller is required to perform hereunder; provided, however, that the purchaser at any sale of this

Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be an assignee or transferee within the meaning of Section 23.01 and this subsection and shall be deemed to have agreed to perform all of the obligations which Seller is required to perform hereunder from and after the date of such purchase and assignment; provided, further, that such assignee or transferee (i) shall assume Seller's obligations under this Agreement and the Sublease; (ii) shall have the financial wherewithal and demonstrated operational experience and capability, or engaged a contractor with demonstrated experience and capability, sufficient to perform all of Seller's remaining obligations under this Agreement and the Lease; and, (iii) shall have been approved by Buyer. Buyer's approval of the assignee or transferee may not be unreasonably withheld, delayed or conditioned.

(d) In the event of the termination of this Agreement as a result of Seller becoming Bankrupt and rejecting this Agreement, to the extent permitted by law, Buyer may enter into a new agreement (a "New Agreement") with any such collateral assignee or its designee effective as of the date of termination of this Agreement, on the same terms and conditions as this Agreement, provided:

i. Such collateral assignee or designee shall make a written request to Buyer for such New Agreement within thirty (30) Days after the date such collateral assignee receives Buyer's notice of termination of this Agreement pursuant to the provisions of this Section 23.03.

ii. Such collateral assignee or designee shall pay or cause to be paid to Buyer at the time of execution and delivery of such New Agreement, any and all sums which would at the time of execution and delivery of such New Agreement be due pursuant to this Agreement but for such termination or foreclosure and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which Buyer shall have incurred by reason of such termination and the execution and delivery of the New Agreement and which have not otherwise been received by Buyer from Seller or any other party in interest under Seller on Seller's behalf;

iii. Such collateral assignee or its designee shall agree to remedy all of Seller's defaults;

iv. Such collateral assignee or designee shall have the financial wherewithal and demonstrated operational experience and capability or engaged a contractor with demonstrated operational experience and capability, sufficient to perform all of Seller's remaining obligations under this Agreement and the Sublease and shall have been approved by Buyer. Buyer's approval shall not be unreasonably withheld, delayed or conditioned.

(e) In the event of any casualty or condemnation with respect to Seller's System, and notwithstanding anything to the contrary contained in this Agreement, the provisions of the collateral assignment most senior in priority shall control with respect to the use of Seller's share of said proceeds.

(f) In the event of any conflict between the terms of this Agreement and the Lender's Consent, the terms of the Lender's Consent shall control to the extent of such inconsistency.

23.03 Buyers' Bankruptcy. In the event of the termination of this Agreement as a result of Buyer becoming Bankrupt and rejecting this Agreement, Seller shall enter into a New Agreement with any such collateral assignee or its designee for the remainder of the Term, effective as of the date of termination of this Agreement, on the same terms and conditions as this Agreement, provided:

(a) Such collateral assignee or designee shall make a written request to Seller for such New Agreement within thirty (30) Days after the date such collateral assignee receives Seller's notice of termination of this Agreement pursuant to the provisions of this Section 23.03.

(b) Such collateral assignee or designee shall pay or cause to be paid to Seller at the time of execution and delivery of such New Agreement, any and all sums which would at the time of execution and delivery of such New Agreement be due pursuant to this Agreement but for such termination or foreclosure, and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which Seller shall have incurred by reason of such termination and the execution and delivery of the New Agreement and which have not otherwise been received by Seller from Buyer or any other party in interest under Buyer on Buyer's behalf; and

(c) Such collateral assignee or its designee shall agree to remedy any of Buyer's defaults of which said assignee was notified by Seller's notice of termination, and which are reasonably susceptible of being so cured by such assignee or its designee.

ARTICLE XXIV
FURTHER ASSURANCES

24.01 Further Assurances Generally. Seller and Buyer agree, from time to time and upon request of the other Party, to do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged or delivered, any and all such further acts, assignments, transfers, conveyances, consents, assurances, documents and instruments as may reasonably be required in order to effectuate the purpose of this Agreement, including obtaining any Permits necessary or convenient to accomplish the foregoing; provided, however, that any such action is not, in the sole discretion of either Party, materially adverse to such Party's interest.

ARTICLE XXV
EMPLOYEE, AGENTS AND REPRESENTATIVES

Whenever either Party is entitled, pursuant to the terms of this Agreement, to review, inspect, notify, consent, approve or take similar actions, such rights may be exercised through the duly authorized agents, employees or representatives of such Party; provided, however, that notice of such authority shall have been provided to the other Party.

ARTICLE XXVI
RIGHT TO REVIEW, APPROVE, COMMENT, ETC.

Whenever Buyer, is entitled, pursuant to the terms of this Agreement, to review, inspect, notify, consent, approve, comment or take similar actions, neither such rights nor any inspection, notification, review, consent, approval or comment made by Buyer, or given pursuant to such rights, nor anything else contained herein, shall be construed to infer that Buyer, is in any way responsible for the design, construction and/or operation of Seller's System.

ARTICLE XXVII
EARLY TERMINATION VALUES

In addition to the termination rights contained elsewhere herein, Buyer, at its sole discretion, may at any time after Facility Acceptance terminate this Agreement and purchase Seller's System, upon one-hundred and twenty (120) Days after delivery of written notice to Seller. If Buyer terminates this Agreement in accordance with this Article XXVII, (x) Buyer shall pay Seller the early termination value as described and calculated in Schedule 16 , (y) all reasonable demobilization costs, and (z) the parties will promptly take all Required Transfer Actions, and execute all documents necessary to (i) cause title to Seller's System to pass to Buyer, free and clear of any liens and encumbrances immediately subsequent to the early termination date, and (ii) assign all warranties for Seller's System to Buyer. The Parties acknowledge that the Early Termination Values set forth in Schedule 16 are calculated based upon the anticipated Fair Market Value of Seller's System at such future dates.

ARTICLE XXVIII
TRANSACTION WITH AFFILIATES

Nothing in this Agreement shall prevent Seller, its Affiliates and subcontractors from contracting with Seller's Affiliates for the construction of Seller's System, provided that such contracts are in customary form and substance with commercially reasonable terms.

ARTICLE XXIX
ARTICLE HEADINGS

The headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any terms of this Agreement.

ARTICLE XXX
GOVERNING FORUM

30.01 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey without regard to conflict of laws principles that would require the application of laws of any other jurisdiction.

30.02 Venue. The Parties agree that any suit, action or proceeding with respect to this Agreement shall be brought and maintained as provided in the laws applicable to New Jersey state agencies. If no venue is provided by law, any suit, action or proceeding with respect to this Agreement shall be exclusively in the appropriate court of the State of New Jersey located in Middlesex County. The Parties hereby expressly and irrevocably submit to the jurisdiction of such courts for the purpose of any such suit, action or proceeding. The Parties hereby irrevocably waive, to the fullest extent permitted by law, any objection that any of them may now or hereafter have to venue of any suit, action or proceeding arising out of or relating to this Agreement or any judgment entered by any court in respect thereof brought in any such court referred to above, and hereby further irrevocably waive any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

ARTICLE XXXI
ENTIRE AGREEMENT

This Agreement, from and after the Effective Date, completely and fully supersedes all other prior understandings or agreements, whether written and oral, between the Parties relating to its subject matter, including the Term Sheet. This Agreement, including the Schedules attached hereto and made a part hereof, shall constitute the entire agreement between the Parties with respect to the subject matter hereof, and no amendment, supplement or modification shall be effective except by a writing signed by duly authorized representatives of both Parties.

ARTICLE XXXII
SEVERABILITY

If any provision of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid, illegal or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid, illegal or unenforceable. If any provision of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

ARTICLE XXXIII
COUNTERPARTS

This Agreement may be executed in any number of counterparts by the Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail (or an attachment thereto) or facsimile transmission shall be effective as delivery of a manually executed counterpart thereof. This Agreement, to the extent signed and delivered by means of electronic mail (or an attachment thereto) or a facsimile machine, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of electronic mail (or an attachment thereto) or a facsimile machine to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or by electronic mail as a defense to the formation or enforceability of a contract and each Party forever waives any such defense.

ARTICLE XXXIV
COMPLEMENTARY AGREEMENTS

This Agreement is to be read and interpreted in a manner that will complement the terms and conditions contained in the Project Documents. However, to the extent that the terms of those documents are deemed to be inconsistent with those contained herein, despite every effort to reconcile same, the terms of this Agreement shall control.

ARTICLE XXXV
APPROVAL

This Agreement shall not become effective, and the terms hereof shall not be binding upon Seller or Buyer, until it is duly authorized, executed and delivered by each of Seller and Buyer.

ARTICLE XXXVI
CONFIDENTIALITY

Each Party agrees that, to the extent permitted by law, it will treat in confidence the terms and conditions of this Agreement and all documents, materials and other information which it shall have been obtained regarding the other Party during the course of the negotiations leading to the execution of this Agreement and the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents. Such documents, materials and information shall not be communicated to any third Person (other than to each Party's counsel, accountants, financial advisors or Lenders or prospective Lenders (including, without limitation, bondholders, trustees, agents, participants, swap counterparties and other debt investors and prospective debt investors) if they have executed confidentiality agreements or otherwise agreed to treat such documents, materials and information in confidence). No other Person shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the subject matter of this Agreement and fulfilling the obligations of the Parties under this Agreement. The obligation of each Party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such Party from a source other than such Party, (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents, (iii) is required to be disclosed under Applicable Law or judicial process, but only to the extent it must be disclosed, or (iv) such Party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby.

ARTICLE XXXVII
SURVIVAL

In addition to the Articles and Sections that survive by their terms, the following Articles shall survive termination of this Agreement: Article XVII and Article XXXVI.

ARTICLE XXXVIII
TIME IS OF THE ESSENCE

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Seller and Buyer have caused this Energy Services Agreement to be executed by their proper, duly authorized officers and their respective seals to be hereunto affixed and attested as of the first date above written.

Witness	**SELLER:**
	MCS MICROGRID, LLC
By:__________________________________	By:__________________________________
Name: ________________________________	Name:________________________________
Title: ________________________________	Title:________________________________
Date: ________________________________	Date: ________________________________
	BUYER:
	MIDDLESEX COUNTY
Witness	
By:__________________________________	By:__________________________________
Name: ________________________________	Name:________________________________
Title: ________________________________	Title:________________________________
Date: ________________________________	Date: ________________________________