

## **SOLAR POWER SERVICES AGREEMENT**

### **PREAMBLE**

This SOLAR POWER SERVICES AGREEMENT (this "Agreement"), dated as of July \_\_, 2018, is made by and between Today's Power, Inc. ("Provider"), and Southern Arkansas University Tech ("Customer") (each, a "Party" and collectively, the "Parties").

### **RECITALS**

WHEREAS, Provider is in the business of developing, owning and managing renewable energy resources and selling the energy output from such resources;

WHEREAS, Customer desires to purchase solar services from Provider;

WHEREAS, Provider desires to install, maintain, and operate the System, as defined herein, on the Project Site, as defined herein; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, the Solar Services, as defined herein.

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

### **AGREEMENT**

1. **Definitions.** Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (d) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" shall mean this Solar Power Services Agreement, including the exhibits hereto.

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

"Base Service Fee" shall have the meaning set forth in Section 3.1.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday for commercial banks under the laws of the State of Arkansas.

"Claim Notice" shall have the meaning set forth in Section 14.3.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall mean the date, as determined by Provider on which the System is (i) functionally complete and operating and (ii) capable of producing Energy.

“Customer” shall have the meaning set forth in the Preamble to this Agreement.

“Customer Default” shall have the meaning set forth in Section 12.1.

“Effective Date” shall be the date set forth in Preamble to this Agreement.

“Electrical System” shall mean the electrical system (whether or not owned by Customer) that is connected to the System at the System’s service panel or other point of connection between the System and such electrical system.

“Energy” shall mean the entire generating capacity output of the System, with projected performance as set forth on Exhibit C attached hereto.

“Environmental Attributes” shall mean any and all claims, credits, benefits emissions reductions, offsets, renewable energy credits and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water, which are deemed of value by Customer; provided that Environmental Attributes shall not include Environmental Financial Incentives or Tax Attributes.

“Environmental Financial Incentives” shall mean each of the following financial benefits, rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under a Governmental Authority’s or a utility’s program or initiative, state and Federal incentive tax credits (including income tax credits and investment tax credits arising under the Code), other tax benefits, and accelerated depreciation, however named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; (ii) all reporting rights with respect to such incentives; and (iii) all Rebates, provided that Environmental Financial Incentives shall not include Environmental Attributes.

“Expiration Date” shall have the meaning set forth in Section 11.1.

“Extension Period” shall have the meaning set forth in Section 11.2.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents, employees or representatives) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, a Force Majeure Event shall be considered to include, without limitation, any of the following events:

- (a) war, riot, acts of a public enemy or other civil disturbance;
- (b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this

Agreement (except that weather events of a nature reasonably anticipated to occur at the Project Site, including those which affect the insolation of the site (for example, cloudy days, rain or other usual and ordinary weather events), shall not be considered a Force Majeure Event); and

(c) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government including, without limitation, any governmental or quasi-governmental entity or independent system operator or regional transmission operator.

“Indemnified Party” shall have the meaning set forth in Section 14.3.

“Indemnifying Party” shall have the meaning set forth in Section 14.3.

“Indemnity Amount” shall have the meaning set forth in Section 15.3

“Insolvency Event” shall mean (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors.

“Insurance Proceeds” shall have the meaning set forth in Section 10.2.

“Interconnection Point” shall have the meaning set forth in Section 5.3.4.

“Lease” shall have the meaning set forth in Section 4.1.

“Lease Period” shall have the meaning set forth in Section 4.1.

“Liens” shall have the meaning set forth in Section 8.1.2.

“MACRS” shall have the meaning set forth in Section 15.1

“Maintenance” shall mean the ordinary upkeep of the System, including testing the performance of the solar panels and inverters, checking the condition of the racking system, and making any minor adjustments or undertaking any other activities necessary to ensure that the System is in good working order. Maintenance shall not include Repairs.

“Meter” shall have the meaning set forth in Section 6.3.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1)-calendar month periods during the Term.

“Party” or “Parties” shall have the meaning set forth in the Preamble to this Agreement.

“Payment Date” shall mean the first Business Day of each month during the Term.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization, firm or other entity, or a Governmental Authority.

“Project Site” shall mean that portion of the Property where the System is physically located, as more fully described in Exhibit B attached hereto.

“Property” shall mean the land/property located at Holly Springs, Arkansas, the legal description of which is set forth in Exhibit A attached hereto.

“Provider” shall have the meaning set forth in the Preamble to this Agreement. For purposes of access rights and other rights necessary for Provider to perform its obligations hereunder, the term “Provider” shall include Provider’s authorized agents, contractors and subcontractors.

“Provider Default” shall have the meaning set forth in Section 12.2.

“Rebates” shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems.

“Repairs” shall mean the repair or replacement of any equipment or component of the System, including the racking system, where such equipment or component is broken, non-performing or materially underperforming.

“Restoration Work” shall have the meaning set forth in Section 10.2.

“Service Fee” shall have the meaning set forth in Section 3.

“Solar Services” shall mean the Energy purchased by Customer pursuant to the terms and conditions of this Agreement.

“System” shall mean a solar power plant with a total generating capacity of 1,000 Kilowatts AC nominal located on the Project Site and shall include, without limitation, the components described in Exhibit C.

“Tax Attributes” shall mean all investment credits, production tax credits, income tax credits and similar tax attributes.

“Tax Benefit Loss” shall have the meaning set forth in Section 15.2

“Tax Benefits” shall have the meaning set forth in Section 15.1

“Term” shall have the meaning set forth in Section 11.1.

“Termination Date” shall have the meaning set forth in Section 11.1.

“Termination Value” shall mean the termination value set forth on the schedule attached hereto as Exhibit F.

“Transfer Taxes” shall have the meaning set forth in Section 3.2.

“Unforeseen Circumstance” shall mean any act, event or condition that has, or may reasonably be expected to have, a direct material adverse effect on the rights or the obligations of the parties under this Agreement, or a direct material adverse effect on the System or its operation, if such act, event or

condition is beyond the reasonable control of Provider. Unforeseen Circumstances include, but are not limited to: (i) Force Majeure Events (but excluding strikes, walkouts, lockouts or similar industrial or labor actions or disputes), (ii) court orders and other legal process, (iii) loss of necessary permits, if not the result of either party's action, (iv) changes in law affecting the permits for, or operation of, the System (for example, new environmental requirements), but not changes in tax law, (v) loss of necessary utilities for reasons other than Provider's fault, (vi) unknown subsurface conditions at the Project Site or the Property (including the presence of hazardous waste), (vii) condemnation, and (viii) the failure of any subcontractor or supplier, other than a subsidiary or affiliate of Provider, to furnish service, supplies or equipment on the dates agreed to if such subcontractor's or supplier's failure so to perform is due to an Unforeseen Circumstance.

2. **Purchase and Sale of Solar Services.** Customer agrees to purchase and accept from Provider, and Provider agrees to sell and deliver to Customer, one hundred percent (100%) of the Solar Services during each Monthly Period of the Term in accordance with the terms and conditions set forth herein. Customer acknowledges and agrees that it is required to take and/or pay for all the Solar Services produced by the System. Customer's purchase of Solar Services does not include Environmental Financial Incentives or Tax Attributes, all of which shall be retained and owned by Provider.

3. **Price and Payment.**

3.1 **Price.** Customer shall pay Provider for the Solar Services provided pursuant to the terms of this Agreement at the service fee rates set forth in Exhibit D ("Base Service Fee") and on the Payment Dates, plus any additional amount required pursuant to Section 3.2 (collectively, the "Service Fee").

3.2 **Taxes.** Customer shall pay and be responsible for all sales, use, excise, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes. Provider will pay and be responsible for any sales or use tax imposed with respect to Provider's acquisition and installation of the System.

3.3 **Billing and Payment.** Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

3.3.1 **Billing.** All Solar Services delivered by Provider to Customer from the System shall be metered and recorded at the delivery point using a Meter, as set forth in Section 6.3. The Meter used for metering and recording Solar Services shall be furnished, installed, owned, maintained, inspected, tested, calibrated, and read by Provider. Provider shall test and calibrate the Meter from time to time. Customer shall receive reasonable advance notice of any Meter test and shall have the right to have a representative present at all Meter tests. By the tenth (10<sup>th</sup>) day of each calendar month during the Term, Provider shall provide metered information to Customer regarding the Solar Services delivered to Customer during the previous month (the "Provider Billing").

3.3.2 **Payments.** For each Monthly Period during the Term, Customer shall pay to Provider the amount due to Provider in U.S. Dollars on the Payment Dates pursuant to Provider Billing.

3.3.3 Late Payments. Any payment not made within five (5) days of the applicable Payment Date shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Provider. Such interest shall accrue at a rate equal to the lesser of ten percent (10%) per annum or the highest level of interest permitted by applicable law.

4. Property.

4.1 Ownership of Property. Provider represents, warrants and covenants that Provider has lawful title to and/or leases the Property free and clear of all liens and encumbrances except as set forth on Exhibit E attached hereto.

4.2 Access to Project Site.

4.2.1 Provider shall not initiate, conduct or permit activities on, in or about the Project Site that could cause damage, impairment or otherwise adversely affect the System.

4.2.2 Customer shall have rights to access the Project Site for the limited purposes of education and public relations, subject to Provider's reasonable and appropriate rules and security measures on the Property to prevent the public and other third persons from having access to the Project Site or the System.

5. Installation, Ownership and Approval of the System.

5.1 Installation. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and Applicable Law. Provider shall procure all materials and equipment for the System installation and maintain the same at the Project Site or Property.

5.2 Permits and Utility Approvals. Provider shall have the primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the construction and installation of the System under this Agreement. Utility approval is the responsibility of Customer. Customer shall apply for a meter point in the Electrical System of the local utility through which net metering and meter aggregation can be accomplished. Customer is responsible for obtaining a waiver of the 300 kW net metering facility limit from the Arkansas Public Service Commission.

5.3 System and Output Ownership.

5.3.1 Title to System. Provider shall at all times retain title to not less than 99% of the System and be the legal and beneficial owner of the System, including the right to any and all Environmental Financial Incentives and Tax Attributes, which include, without limitation, Provider's right to retain, sell, transfer or assign the same. Customer shall have title to 1% of the System (the "Customer's Interest"). The System shall (i) remain personal property and shall not attach to or be deemed a part of, or fixture to, any Property, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Customer warrants and represents that it shall keep the System free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Provider or its creditors). The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4) of the Code and any related regulatory and administrative pronouncements, so that this Agreement is treated as a service agreement and not a lease and the terms of this

Agreement shall be construed consistently with the intention of the Parties. The Parties agree that this Agreement constitutes a service agreement within the meaning of Section 7701(e)(4) of the Code. Customer shall be entitled to receive all Renewable Energy Credits earned by the System in lieu of any Environmental Financial Incentives and Tax Attributes.

5.3.2 Energy Delivery. All obligations related to delivering Energy from the System to the Customer will begin upon the Commercial Operation Date. In no event shall Provider have any liability to Customer for deliveries of Energy prior to the Commercial Operation Date.

5.3.3 Ownership of Environmental Attributes, Environmental Financial Incentives and Tax Attributes; Assistance. All Environmental Financial Incentives and Tax Attributes available in connection with the System are owned by Provider. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives and Tax Attributes currently available or subsequently made available in connection with the System, at Provider's expense. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentives or Tax Attributes, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentives or Tax Attributes. Notwithstanding the foregoing, Customer, as an owner of the Customer's Interest, shall be entitled to all Environmental Attributes produced by the System. Provider shall cooperate with Customer, at Customer's cost, take all actions requested by Customer that are reasonable and necessary to assist Customer in registering, and maintaining registration for, such Environmental Attributes. Upon the reasonable request of Customer from time to time, and at Customer's expense, (i) Provider shall deliver or cause to be delivered to Customer such attestations/certifications of Environmental Attributes as may be reasonably requested by Customer to comply with any certification system or program for such Environmental Attributes, and (ii) Provider shall provide full cooperation in connection with Customer's registration and certification of such Environmental Attributes.

5.3.4 Risk of Loss; Exclusive Control. As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to an Electrical System (the "Interconnection Point"). However, the Customer will bear the risk of loss of any Renewable Energy Credits as a result of any interruption in the Energy while in the exclusive control of the Provider. The utility, Ouachita Electric Cooperative Corporation, will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy at and after the Interconnection Point. Risk of loss of the Energy on the Electrical System shall be determined by the agreements between the utility and the Customer and orders of the Public Service Commission and shall not be borne by the Provider.

5.4 Financing of System. In connection with financing or a sale-leaseback of the System, Customer shall execute all pledges, security agreements, and mortgages pertaining to Customer's Interest in the System that may be requested by Provider.

## 6. Operation and Maintenance of System.

6.1 O&M Work Phase/Datashare. Provider, at its sole cost and expense, shall provide or cause a third party to provide all operation, monitoring and Maintenance services for the System during the Term. Provider shall properly maintain, pay for and provide access to necessary

phone, data or other communications lines to record electrical output of the System. If, in the sole opinion of the Provider, Repairs are needed to the System in order for it to perform as designed, Provider shall be responsible for performing, or causing a third party to perform, such Repairs.

6.2 Malfunctions and Emergencies. Each of Customer and Provider shall cooperate with and notify the other Party within twenty-four (24) hours following the discovery of any material malfunction in the operation of the System. Provider and Customer each shall notify the other Party immediately upon the discovery of an emergency condition in the System.

6.3 Metering. Provider shall install or cause to be installed a meter ("Meter") on the Property for the measurement of Solar Services provided to Customer from the System on a continuous basis and shall provide Customer access to the Meter and to all information generated thereby.

6.4 Outages. Provider shall be entitled to suspend delivery of Energy to Customer for the purpose of maintaining, repairing or making capital improvements to the System and such suspension of service shall not constitute a breach of this Agreement, provided that Provider shall use commercially reasonable efforts to minimize any interruption in service to Customer.

6.5 Curtailment. Customer shall have the right to notify Provider, by telephonic communication, to curtail the full Energy production of and/or deliveries from the System for any reason in Customer's sole discretion, and Provider shall comply with such curtailment order as soon as reasonably practicable. However, if Customer requests curtailment, Customer must pay Provider for production that the system would have produced if not curtailed.

6.6 No Performance Guarantee. Provider makes no performance guarantee with respect to the System.

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

- (a) it is duly organized, validly existing and in good standing under the laws of the state of its formation;
- (b) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms;
- (e) to its knowledge there is no litigation, action, proceeding or investigation pending or threatened on any basis before any court or other Governmental Authority by, against, affecting or involving any of its business, properties or assets (including, without limitation, with respect to Customer, the Project Site or any interest therein) that would affect its ability to perform its obligations under this Agreement; and,



- (f) its execution of and performance under this Agreement shall not violate any existing Applicable Law or create a default under any agreement to which it is a party.

8. **Covenants.**

8.1 **Provider's Covenants.** As a material inducement to Customer's execution and delivery of this Agreement, Provider covenants and agrees to the following:

8.1.1 **Permits and Approvals.** Provider shall use commercially reasonable efforts to assist Customer in fulfilling Customer's responsibilities under Sections 5.2 and 8.2.2.

8.1.2 **Provider Records.** Provider shall maintain and keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

8.2 **Customer's Covenants.** As a material inducement to Provider's execution of this Agreement, Customer covenants and agrees as follows:

8.2.1 **Liens.** Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to the System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 3.2. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and, subject to the provisions of Section 14.2, shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred by Provider in discharging and releasing such Lien.

8.2.2 **Consents and Approvals.** Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations and inspections from relevant Governmental Authorities, utility personnel, and other agreements and consents related to the operation of the System, performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility.

9. **Insurance Requirements.**

9.1 **Provider's Insurance.** During all periods covered by this Agreement through the Expiration Date or Termination Date (as applicable), Provider shall maintain, at its sole expense, coverage limits of \$10 million combined, commercial general liability insurance and umbrella liability and "all risk" property insurance covering the System installed at the Project Site. Provider, if it has employees, shall also maintain at all times during the Term workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law and automobile liability insurance coverage. Provider shall deliver to Customer certificates of insurance evidencing such coverage and naming Customer as an additional insured. Such insurance shall be on an occurrence basis and shall be primary coverage without right of contribution from any insurance of Customer.

9.2 Customer's Insurance. Customer represents to Provider that Customer maintains no commercial general liability insurance. In the event that Customer obtains commercial general liability insurance during the Term of this Agreement, Customer shall use good faith efforts to obtain coverage on an occurrence basis, which shall be primary coverage without right of contribution from any insurance of Provider, and shall deliver to Provider certificates of insurance evidencing such coverage.

10. **Force Majeure; Casualty; Condemnation.**

10.1 Force Majeure Events. If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and the performance of its obligations under this Agreement shall be excusably delayed to the extent that such Force Majeure Event has interfered with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. Notwithstanding anything in this Section 10 to the contrary, no payment obligation of Customer under this Agreement may be excused or delayed as the result of a Force Majeure Event. In case a Force Majeure Event continues for two (2) years or more, either Party may terminate this Agreement by written notice to the other and in such an event, neither party shall have liability to the other for any damages as a result of such termination.

10.2 Casualty. If the System is damaged or destroyed by fire, theft or other casualty, Provider shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction (the "Insurance Proceeds"). Provider, using the Insurance Proceeds, shall within one hundred eighty (180) calendar days after the Insurance Proceeds become available to Provider (or if such restoration cannot be reasonably accomplished within such 180 day period, within such time period as is reasonably necessary after such 180 day period to complete such restoration so long as such restoration is commenced within such 180 day period and is pursued with reasonable diligence during and after such period), repair, restore, replace or rebuild the System to substantially the same condition as existed immediately prior to the damage or destruction, assuming the System was in the condition and repair required to be maintained in accordance with the terms herein, and shall be made, or caused to be made and substantially in accordance with the originally approved plans for the System (the "Restoration Work"). Notwithstanding the foregoing, in the event of substantial damage or destruction by casualty which damage Provider reasonably determines is such that the reconstruction of an economically viable System is not practicable or economical, for reasons including but not limited to (a) the Insurance Proceeds made available to Provider are not sufficient to repair such loss or damage, or (b) such reconstruction cannot be carried out under Applicable Laws, including then-current building or zoning laws, then Provider shall have the right to terminate this Agreement at no liability to Provider. If Provider elects to reconstruct the System, and if the Insurance Proceeds received by Provider are insufficient to pay the entire cost of the Restoration Work, then the amount of any such deficiency shall be borne solely by Provider. If the Insurance Proceeds received by Provider exceed the entire cost of the Restoration Work, then such excess proceeds shall be retained by Provider.

10.3 Condemnation. If at any time during the Lease Period, any part of the Project Site or System is taken for any public or quasi-public use under Applicable Law, ordinance or regulation by a Governmental Authority by condemnation or right of eminent domain, then each Party shall be entitled to separately pursue an award for its respective property interest appropriated as well as any damages suffered thereby, and each Party hereby waives any right to any award that may be prosecuted by the other Party.

11. **Term; Termination.**

11.1 **Term.** The initial term of this Agreement (the "Term") shall commence on the Effective Date and shall expire on the date (subject to extension as set forth in Section 11.2, below, the "Expiration Date") that is twenty (20) years after the Commercial Operation Date, unless and until terminated earlier pursuant to this Agreement (the date of any such termination, the "Termination Date"). However, during the Term, and any Extension Period, payment and performance of Customer under this Agreement in fiscal periods following the current fiscal period are subject to the availability and appropriation of funds by the Arkansas General Assembly.

11.2 **Extension of Term.** Not less than two hundred ten (210) days prior to the Expiration Date, Provider shall notify Customer of its reasonable determination of the remaining useful life of the System and the Service Fee that would be payable during the Extension Period (as defined below), such Service Fee to be based on the fair market value of the System at the time of such determination. Upon prior written notice to Provider at least one hundred eighty (180) days prior to the Expiration Date, Customer shall have the option to extend the Term for an additional period equal to the lesser of (a) five (5) years and (b) the number of days equal to 80% of the then remaining useful life of the system as of the original Expiration Date, as determined by Provider (the "Extension Period"). Upon Customer's written notice to Provider of its election of the Extension Period, the Expiration Date shall be at the last date of the Extension Period. Notwithstanding any provision to the contrary in this Section 11.2, should Provider enter into a sale and lease-back transaction regarding the System with a third party for purposes of financing, any extension rights of Customer hereunder shall in all respects be consistent, and not in conflict, with the extension rights, if any, of Provider as set out in the System lease documents between Provider and such third party. In such event, Provider and Customer shall agree on changes to this Section 11.2 to achieve such consistency, and if Provider and Customer are unable to so agree, Customer shall not have any extension rights hereunder.

11.3 **Removal of System.** Upon the Expiration Date (including if extended by an Extension Period), Provider may continue to operate the System in place and provide the Energy to other persons.

11.4 **Payment of Termination Value on Termination Date.** In the event that Customer shall terminate the agreement other than as a result of a Provider Default or other than as a result of the non-appropriation of funds for the Customer, or this Agreement shall be terminated for reasons attributable to Customer including a Customer Default prior to the Expiration Date, Customer shall pay to Provider the Termination Value, less the value of the Customer's Interest, plus any other unpaid amounts then due and outstanding under this Agreement. The Parties agree that actual damages to Provider in the event of a termination of this Agreement would be difficult to ascertain and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider.

11.5 **Provider Termination.** Provider shall have the right, upon written notice to terminate this Agreement for cause, which shall include a Customer Default.

11.6 **Customer Termination for Non-Appropriation.** Customer's obligations hereunder, including payment and all other performance obligations, for fiscal periods succeeding Customer's current fiscal period shall be subject to the availability and appropriation of funds by the Arkansas General Assembly for the procurement of the Solar Services and for the continued operations of the Customer. In addition to other remedies provided herein, within thirty (30) days before the commencement of each fiscal period of this State, the Customer may terminate this Agreement by written notice to Provider if the Customer's appropriated funds are insufficient for it to continue its operations as an Institution of the State of Arkansas or to continue its obligations for the procurement of the Solar

Services during the fiscal period. In the event of such termination, Customer shall not owe Provider any Termination Value.

12. **Defaults.**

12.1 **Customer Default.** The occurrence at any time of any of the following events shall constitute a "Customer Default":

12.1.1 **Failure to Pay.** The failure of Customer to pay any amounts owing to Provider on or before the day following the date on which such amounts are due and payable under the terms of this Agreement and Customer's failure to cure each such failure within three (3) Business Days after Customer receives written notice of each such failure from Provider;

12.1.2 **Failure to Perform Other Obligations.** Unless due to a Force Majeure Event excused by Section 10, the failure of Customer to perform or cause to be performed any other obligation required to be performed by Customer under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct in any material respect as and when made; provided, however, that if such failure by its nature can be cured, then (except for the obligation to allow Provider access to the System in the event repair or emergency service is required) Customer shall have a period of thirty (30) days after receipt of written notice from Provider of such failure to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days; provided, finally, that in any event if such failure shall continue for at least five (5) days and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

12.1.3 **Bankruptcy, Etc.** (a) Customer admits in writing its inability to pay its debts generally as they become due; or (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; or (c) Customer makes an assignment for the benefit of creditors; or (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; or (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; or (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

12.2 **Provider Default.** The occurrence at any time of the following events shall constitute a "Provider Default":

12.2.1 **Failure to Perform Obligations.** Unless due to a Force Majeure Event excused by Section 10, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct in any material respect as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a

period of thirty (30) Business Days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for a period of time reasonably required to accomplish such cure;

12.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; or (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; or (c) Provider makes an assignment for the benefit of creditors; or (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; or (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; or (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

### 13. Remedies Following Default.

13.1 Customer's Remedies Upon Provider Default. If a Provider Default as described in Section 12.2 has occurred and has not been cured as provided therein, Customer may either (a) pay the Termination Value to Provider in exchange for transfer of title of the System from Provider to Customer (such transfer shall be AS-IS, WHERE-IS with no representations or warranties of any kind and as of the date of such transfer, this Agreement shall terminate and be of no further force or effect) or (b) terminate this Agreement by written notice and this Agreement shall be of no further force or effect as of the date the termination notice is given. Provider's liability hereunder as liquidated damages shall be in all respects limited to amounts paid to it hereunder during the most recent twenty- four (24)-month period.

13.2 Provider's Remedies Upon Customer Default. If a Customer Default as described in Section 12.1 has occurred, Provider may terminate this Agreement as provided in Section 11.5, above.

13.3 No Consequential Damages. NOTHING IN THIS AGREEMENT IS INTENDED TO CAUSE EITHER PARTY TO BE, AND NEITHER PARTY SHALL BE, LIABLE TO THE OTHER PARTY FOR ANY LOST BUSINESS, LOST PROFITS OR REVENUES FROM OTHERS OR OTHER INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, ALL CLAIMS FOR WHICH ARE HEREBY IRREVOCABLY WAIVED BY CUSTOMER AND PROVIDER. NOTWITHSTANDING THE FOREGOING, NONE OF THE PAYMENTS FOR ENERGY ACTUALLY RECEIVED OR ANY OTHER AMOUNT SPECIFIED AS PAYABLE BY CUSTOMER TO PROVIDER UNDER THE TERMS OF THIS AGREEMENT UPON THE TERMINATION OF THIS AGREEMENT SHALL BE DEEMED CONSEQUENTIAL DAMAGES.

13.4 Effect of Termination of Agreement. Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 14). Such

termination shall not relieve either Party from obligations accrued prior to the Termination Date or Expiration Date, as applicable

14. **Indemnification.**

14.1 **Indemnification by Provider.** Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control or (b) a Provider Default; provided, however, that Provider's obligations pursuant to this Section 14.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Customer; provided further, however, that nothing in this Section is intended to modify the limitation of Provider's liability set forth in Sections 13.3 above.

14.2 **No Indemnification by Customer.** Under Article 12, Section 12 of the Arkansas Constitution, the Customer, as a sovereign entity, may not enter into a covenant or agreement to hold a party harmless or to indemnify from prospective damages. The obligation of the Customer to reimburse Provider with respect to any loss, expense, damage, liability, claims or demands, either at law or in equity, for actual or alleged personal injuries or property damage caused by the Customer and its employees, agents, subcontractors, or volunteers, and under arising out of the terms of the Agreement, may be pursued only by the Provider in a proceeding before the Arkansas State Claims Commission. In any such proceeding or in any court proceeding commenced by the injured party or parties, the Customer agrees with the Provider that (1) it will cooperate with the Provider in the defense of any action or claim brought against the Provider seeking the foregoing damages or relief; (2) it will in good faith cooperate with the Provider should the Provider present any claim of the foregoing nature against the Customer to the Claims Commission of the State of Arkansas; (3) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however the Customer reserves the right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum. The obligations of this paragraph shall survive the expiration or termination of the Agreement. This Agreement shall not be construed as or constitute a waiver of sovereign immunity of the State of Arkansas or its entities thereof, including Customer; nor shall it constitute a waiver of the legal requirements for filing a claim against Customer or the legal requirement that any and all claims against the State of Arkansas, its entities, including Customer must be filed with the Arkansas State Claims Commission, 101 East Capitol Ave., Little Rock, Arkansas 72201. The laws of the State of Arkansas shall apply to any claim made against the Customer under this Agreement

14.3 **Notice of Claims.** Any Party seeking indemnification or making a claim hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that such Indemnifying Party has been prejudiced by such failure.

14.4 **Defense of Action.** If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to

the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 14 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

14.5 Survival of Provisions. The provisions of this Section 14 shall survive the expiration or termination of this Agreement.

15. **Special Tax Indemnity**

15.1 Assumptions. This Agreement was entered into on the assumption that the System will be eligible for such deductions, credits and other tax benefits as are provided by federal, state and local laws to an owner of property ("Tax Benefits") including, without limitation: (a) Modified Accelerated Cost Recovery System ("MACRS") deductions pursuant to Section 168 of the Code in amounts based upon a tax basis equal to cost of the Equipment and the respective Recovery Class (depreciable life); (b) all deductions for interest on any indebtedness incurred to finance any Item of Equipment; (c) treatment of all items of income and deduction relating to this Agreement as coming from sources wholly within the United States, and (d) the renewable energy tax credit pursuant to Section 48 of the Code based on qualifying use for the period of time necessary thereunder for full utilization of the tax credit.

15.2 Payment of Indemnity Amount. Subject to the provisions of Section 14.2, if as a result of any act or omission of Customer (other than entering into this Agreement), Provider (or if Provider has entered into or subsequently enters into a sale-leaseback of the System, Provider's lessor) shall lose the right to claim, or not be entitled to claim, all or any portion of the Tax Benefits, or if all or any portion of the Tax Benefit claimed shall be disallowed, recaptured, reduced or eliminated, in whole or in part, or if the originally contemplated after-tax return is adversely affected (collectively, "Tax Benefit Loss"), then Customer shall pay to Provider the "Indemnity Amount" as hereinafter defined.

15.3 Indemnity Amount. The "Indemnity Amount" as used herein shall equal that amount which, after deductions of all taxes, interest, additions to tax, penalties, costs, fees and expenses payable by Provider (or Provider's lessor, if applicable) with respect to the receipt thereof, which will permit such person to receive (on an After-Tax Basis over the Term of this Agreement) the same return that such party would have realized had there not been a Tax Benefit Loss. The Indemnity Amount shall be calculated on the assumption that (i) Provider (or Provider's lessor, if applicable) is subject to the maximum Federal and State Corporate Income Tax Rate with respect to each year, and (ii) but for the Tax Benefit Loss, all Tax Benefits would be currently utilized. The Indemnity Amount shall be payable to Provider upon demand of Provider.

16. **Miscellaneous Provisions.**

16.1 Notices. All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, (c) sent by reputable overnight express courier, (d) transmitted by facsimile where confirmation of successful transmission is received from the receiving party's facsimile machine (such transmission to be effective on the day of receipt if received prior to 5:00 p.m. local time on a

Business Day or in any other case on the next Business Day following the day of transmittal) or (e) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgment), addressed in each case to the addresses set forth below, or to any other address either of the Parties shall designate in a written notice to the other Party:

If to Provider:

Today's Power, Inc.  
P.O. Box 194208  
Little Rock AR 72219-4802  
Attention: Michael W. Henderson, President  
Phone: 501-570-2228  
Fax: (501) 570-2928  
Email: michael.henderson@aecc.com

With a copy to:

Today's Power, Inc.  
P.O. Box 194208  
Little Rock AR 72219-4802  
Attention: General Counsel

If to Customer:

Southern Arkansas University Tech  
P.O. Box 3499  
Camden, AR 71711  
Attention: Dr. Jason L. Morrison, title Chancellor  
Phone: (870) 574-4500

Email: jmorriso@sautech.edu

All notices sent pursuant to the terms of this Section 16.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next Business Day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) Business Day following the day sent or when actually received.

16.2 Assignment by Customer. Customer shall not assign its Customer's Interest, interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld or delayed. Any assignment by Customer not permitted under this Section 16.2 shall be void *ab initio*.

16.3 Assignment by Provider. Provider shall not assign its interests in this Agreement, nor any part thereof, without Customer's prior written consent, which consent shall not be unreasonably withheld or delayed; provided that Provider may (i) make an assignment to an affiliate of Provider, (ii) make an assignment through merger, consolidation or sale of all or substantially all of Provider's stock or assets, and (iii) make an assignment to a capital provider or bank or other financial institution as part of a financing arrangement. A direct assignee of Provider's obligations hereunder shall



assume in writing, in form and content reasonably satisfactory to Customer, the due performance of all Provider's obligations under this Agreement. Customer will provide such confirmations, releases and novations as are reasonably requested by Provider in connection with any such assignment. Any assignment by Provider not permitted under this Section 16.3 shall be void *ab initio*.

16.4 Successors and Assigns. The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

16.5 Entire Agreement. This Agreement (including all exhibits attached hereto and incorporated herein by this reference) represents the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous oral and prior written agreements.

16.6 Amendments to Agreement. This Agreement shall not be amended, modified or supplemented except in a writing executed by both Provider and Customer at the time of such amendment, modification or supplement.

16.7 Waivers; Approvals. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

16.8 Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

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

16.10 Counterparts. This Agreement may be executed in counterparts, including by facsimile transmission, each of which shall be deemed an original and all of which when taken together shall constitute one and the same Agreement.

16.11 No Third Party Rights. This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

16.12 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

16.13 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or to provide public utility services.

16.14 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

16.15 Cooperation with Financing. Customer acknowledges that Provider may be financing the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Provider Defaults as a financing party may reasonably request).

16.16 Governing Law. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED UNDER THIS AGREEMENT, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARKANSAS APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

16.17 Attorneys' Fees. If any action shall be instituted between Customer and Provider in connection with this Agreement, each Party in such action shall be responsible for its own reasonable costs, attorney's fees and expenses incurred in connection with such action.

16.18 Waiver of Jury Trial. **TO THE EXTENT ENFORCEABLE UNDER APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PROVIDER TO ENTER INTO THIS AGREEMENT.**

16.19 Injunctive Relief. The Parties acknowledge and agree that any violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such violation or breach, and regardless of any other provision contained in this Agreement, such

Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

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

16.21 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

16.22 Additional Documents and Actions. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 16.22.

17. **Estoppel.**

Either Party, without charge, at any time and from time to time, within ten (10) Business Days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm or corporation specified by such requesting Party:

- (a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (b) Whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party, the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- (c) Such other information as may be reasonably requested by a Party.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

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IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

TODAY'S POWER, INC.

By: \_\_\_\_\_

Name: Michael W. Henderson

Title: President

Dated: \_\_\_\_\_

CUSTOMER:

SOUTHERN ARKANSAS UNIVERSITY TECH

By:  \_\_\_\_\_

Name: Jason L. Morrison

Title: Chancellor

Dated: 7/30/2018 \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

Please insert legal description

**EXHIBIT B**  
**DESCRIPTION OF PROJECT SITE**

Insert legal description of job site

**EXHIBIT C**  
**DESCRIPTION OF SYSTEM**

**A 1.2 MW DC Monocrystalline Photovoltaic System**

## **EXHIBIT D**

### **BASE SERVICE FEE SCHEDULE**

**Solar Services shall be charged based on performance of the System. To determine performance, Provider shall measure the energy produced each month from the System as a representative of the performance and assess a charge of 5.65 cents/kWh to reflect the value of the solar services provided.**



**EXHIBIT E**  
**PERMITTED LIENS**

None

**EXHIBIT F**  
**SCHEDULE OF TERMINATION VALUE**

**To be provided**