Joint Solar Parties Comments and Suggested Revisions to the Community Solar Disclosure Form, Program Brochure, and Marketing Guidelines

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively the "Joint Solar Parties") are pleased to provide comments on the draft Community Solar marketing documents, including the draft Disclosure Form, the draft Program Brochure ("Brochure"), and the marketing guidelines.

As an initial matter, the Joint Solar Parties wish to make a few important points that recur throughout the comments. First, the Joint Solar Parties appreciate the IPA's goal to protect subscribers and it is one shared by the industry. Consumer education and engagement is absolutely critical to building a successful market. Any negative customer impressions about community solar or the solar industry hurt the entire market and can even negatively impact markets outside of Illinois. The Joint Solar Parties support consumer protection measures that are right-sized to foster a healthy, competitive and reliable market and facilitate a positive customer experience.

Several of the IPA's proposals—particularly for residential customers—go beyond what the solar (and other comparable) industry faces. We anticipate these proposals will have a negative impact on the customer experience and ultimately make it more difficult for these customers to participate. The risks involved with, for instance, acquiring signatures on two separate Brochures (including perhaps the actual Brochure provided at the first contact), restrictions on pricing, and the potential that the IPA will call customers and quiz them on an IPA-created disclosure form at the Approved Vendor's risk, make the residential requirements particularly challenging. These artificial barriers—which are not required or encouraged by statute, and go beyond the IPA's inspiration from Part 412—are inconsistent with statute:

> The Agency shall establish the terms, conditions, and program requirements for community renewable generation projects with a goal to expand renewable energy generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties.

(20 ILCS 3855/1-75(c)(1)(N).) While the Final Approved LTRRPP suggests that this requirement may be satisfied by adders and incentives—a concept the Joint Solar Parties do not dispute—adding artificial barriers to residential subscriptions is inconsistent with this language.

Additionally, in some areas the IPA has gone far beyond Part 412, which is inconsistent with the Final Approved LTRRPP. According to the Final Approved LTRRPP, the IPA received Commission approval to require that:

> . . . as a condition of ongoing approval, **for distributed generation systems or community solar subscription shares below 25 kW in size**, Approved Vendors will be expected to comply with marketing standards **equivalent to the following sections of Commission-approved rules** for marketing practices by alternative retail electric suppliers.

(Final Approved LTRRPP at 125 (emphasis added, citations omitted).) For instance, it is not "equivalent to" Section 412.240—which explicitly allows for automatic contract renewal—to ban automatic contract renewal. In addition, it is inconsistent with Sections 412.120, 412.130, 412.140, 412.150, and 412.160 to require two contacts and customer signature on two Brochures when these sections all allow for

enrollment based on a single contract. Third, these sections of Part 412 apply only to "solicitation," *i.e.*, scenarios in which a customer is enrolled. As the Illinois Commerce Commission held:

> **The Commission disagrees that this sort of conversation [i.e. one where a customer is not enrolled] would fall under Section 412.120 because there is no enrollment. Rather, a potential customer would still need to sign up with a RES online or call the RES directly. Therefore, the sale will actually be regulated by Sections 412.150 and 412.140, respectively.** ICEA's concern regarding the Commission's authority over these kinds of friends and family interactions is unfounded; the Commission agrees it has none.

(ICC Docket No. 15-0512, First Notice Order dated September 22, 2016 at 56 (emphasis added).) The level of control the IPA exerts over scenarios in which the customer cannot enroll is not "equivalent to" Part 412.

In addition, the Joint Solar Parties note that the IPA makes no distinction in the marketing standards applicable to Small Subscribers and others. This is inconsistent with the LTRRPP, which at minimum restricted the requirements "equivalent to" Part 412 to Small Subscribers. The marketing guidelines appear to ignore the "equivalent to" statement in the LTRRPP and use Part 412 as a starting point rather than reflecting a balance between consumer protection and overregulation.

Finally, the Joint Solar Parties note that some of the recommendations for changes to the marketing guidelines would make them inconsistent with the behind-the-meter marketing guidelines. To the extent that the IPA adopts the Joint Solar Parties' proposed changes, the IPA should make conforming changes to the behind-the-meter guidelines to the extent there is an identical or equivalent provision.

By making the changes we suggest herein, the Joint Solar Parties strongly believe that it will improve the customer experience, meet the objectives of the LTRRPP and improve the customer's understanding of their community solar subscription terms.

Draft Community Solar Disclosure Form

General Comments on the Draft Disclosure Form

The following comments pertain to the Draft Community Solar Disclosure Form. Generally speaking, the form that the IPA has provided will undermine the purpose of providing a disclosure to customers. While we support the IPA's goal of providing customers with the education and information necessary to evaluate various types of community solar offerings and make informed choices, the disclosure form's length, rigid structure and requirements to include information not directly relevant to their contract undermine that objective. A simple, easy to read disclosure form that gives community solar providers flexibility to describe their product offering combined with a brochure that provides customers with context and information about community solar and common types of product offerings will enable customers to more effectively evaluate contract terms.

The format of the draft Disclosure is very confusing and will be difficult to use in digital format. It is also duplicative of information provided in the brochure and/or inconsistent with the Marketing

Guidelines. Member experience from working in states across the country clearly indicates that the more superfluous information added into a disclosure (particularly if it is duplicative or inconsistent with the language used in the brochure), the less likely customers are to read and understand it.

Research and best practices for creating disclosure forms indicate that, to the extent possible, they should be in table format and they should be clear and concise.[1] A report for the U.S. Department of Labor notes that, "Disclosure is effective only when the receivers pay attention to the information, have the capacity to interpret it, and are willing to incorporate it in their decision-making process."[2] Some of the lessons learned from this research may be helpful to the IPA in rethinking this consumer disclosure form so that it is effective and useful for customers. Some of these include:

- Presenting information in tables can be helpful
- Pay attention to design features: contextual framing, visual hierarchy, information sequencing, font choice, white space, etc.
- Layer information carefully: Identify key pieces of information and locate them together in a highly visible place and format; people pay more attention to information on the first page
- Prioritize information in an accessible format.[3]

The Joint Solar Parties believe the purpose of providing a Disclosure to a customer is to highlight and summarize the most important terms of a community solar agreement. Thus, the first step in developing a Contract Summary Disclosure template is to identify the most important terms likely to be found in an agreement. Based on our experience in other markets, the most important contract terms include the following:

- Effective date
- Contract Term (i.e. length of contract after effective date)
- Subscription type and price, including the escalator or any rate increases over time
- Any other applicable fees (including but not limited to annual or monthly fees, security deposits, initial or other upfront fees)
- Early termination or cancellation fees and terms

These terms should be prioritized and placed on the first page of the Disclosure. As many commenters noted in the webinar to address these forms, the regulatory commissions in New York and Maryland have approved simple, effective forms that accomplish these goals. New Jersey is also in the process of adopting a form similar to New York's and Massachusetts also employs an effective two-page disclosure form.

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[1] See, e.g. *Effective Disclosures in Financial Decisionmaking*, Prepared for the U.S. Department of Labor, available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/effective-disclosures-in-financial-decision-making.pdf.

[2] *Id.* at 20.

[3] *Id*. at 21.

Moreover, the disclosure is inconsistent with the LTRRPP, as approved by the Commission. The LTRRPP includes the following language:[4]

> **Disclosure Form:** The Agency, in conjunction with its Program Administrator, will develop and provide to Approved Vendors standard Disclosure Forms to be completed and provided to each program participant prior to contract execution. For distributed generation projects, the form will at minimum, include standard information on the **system equipment and components, warranty, installer, and lease or financing structure. The form will also include a standardized estimate of the price and performance of the system as installed**, including anticipated first year production, expected annual system production decreases, **expected overall percentage degradation over the life of the system,** a standard forecast for retail electricity prices, **a net cash flow analysis, and a target rate of return of each project.** The form will also include a disclosure that cash flows may change if the utility's net metering tariffs or distributed generation rebates change prior to the completion of the system (e.g., the changes that occur when net metering enrollment reaches 5%). The Agency will provide standard electricity prices (and other inputs) to be used for these estimates as to allow equivalent comparisons between different offers. For community solar subscribers, the form will include similar applicable provisions as well as conform to the provisions listed in Section 7.6.2.

Several of the items in bold font above are not applicable to community solar facilities because the system will not be installed on the customer's property and in most cases the customer will have no ownership interest in the facility itself. In addition, items like the financing structure and the targeted rate of return—at least from the developer's perspective—is wholly irrelevant to whether the customer sees value. Of course, the Joint Solar Parties understand that some products (such as a fixed monthly payment) require an estimated output to evaluate the subscription pricing, but a guaranteed savings, PPA pricing, or myriad other structures generate savings based on different factors such as the retail price of energy.

The IPA reasoned on the webinar that the Disclosure should be as standardized as possible. However, **requiring a subscriber organization to include a number of irrelevant provisions or other information that is not applicable to its contract is more likely to confuse a customer than to provide the customer with useful information**. Additionally, with a "pay as you go / pay for what you receive" type of model (which describes most community solar offerings), an upfront payment model is irrelevant. Moreover, despite the fact that the "pay as you go" model is used most often in practice, it is listed last in the menu of options. The more "buried" the relevant information is in the Disclosure, the less likely people will actually read it.

During the webinar, the IPA also noted that they wanted the Disclosure to be used by customers as a tool to compare community solar models, "apples to apples," and that the information corresponding to more than one potential model needed to be included within the same Disclosure. This is a very problematic notion. It is difficult at this point to know the number of models that may be developed or offered in Illinois. The competitive market should be allowed to respond to customer interest and demand, which in Illinois may be the same as or different from

[4] Final LTRRPP, Section 6.13, at 124

experience in other states. The Draft Disclosure proposed by the IPA is initially restricted to three, with Approved Vendors required to provide proprietary pricing information to the IPA in order to even offer any different approach.

The Joint Solar Parties also note that the Disclosure, Brochure and Marketing Guidelines are heavily focused on community solar offerings that are based on per-kWh rates and kW shares and don't appear to consider a wide range of other products. One omission of many that stands out: products that offer a set percent discount on the value of bill credits. Customers who choose this model pay a percentage of their virtual net metering credit as a subscription fee (e.g. pay $90 when the virtual net metering credit is $100). Under this type of contract, much of the information required in the Disclosure and other materials, such as annual production decreases and percent degradation over the life of the project, isn't relevant and will only increase customer confusion. In addition, any requirement that the Approved Vendor or its agent express the subscription price as a cents per kWh will be impossible—even though the underlying question such a rate is trying to answer (will the customer save money?) is already answered by the product pricing structure itself. A percent discount on virtual net metering credits is a common offering in the market and the IPA should not disadvantage Approved Vendors who choose to provide this option to customers by requiring use of a disclosure form that is structured for a different product. The Joint Solar Parties note this is merely one example of the negative effects of the IPA narrowly defining contract structures in the Disclosure, Brochure, and Marketing Guidelines.

A more effective way of enabling customers to compare community solar models would be to provide customers with key questions to ask that get at the value of various types of approaches that have different risk and reward profiles. This allows individual customer risk and reward appetites to dictate decision-making rather than burying that information under disclosures that are not relevant to every customer. Keeping this type of information in the brochure, rather than duplicating it in the disclosure form by requiring pages of superfluous information, would allow the disclosure form to be simple and easy to read for the customer. Armed with a solid understanding of different types of community solar models and the key questions to ask for a customer to think about their own risk and reward appetites, customers will be able to choose which model works best for them and understand key terms and conditions to evaluate when reviewing a potential contract and disclosure form.

If properly designed, a Disclosure can be a valuable tool for both subscriber organizations and customers that highlights and summaries the most important terms of a community solar agreement. The forms used in Maryland, New York, Massachusetts and likely New Jersey strike the right balance of providing key contract details while also being concise enough that customers will read and understand them.

To that end, the Joint Solar Parties recommend a Disclosure format in which the Approved Vendor provides certain minimum information but has far more flexibility in describing their products. In all other states where disclosure forms for community solar subscribers exist, they are documents

that can be downloaded from a state agency or program administrator's website. Community solar providers download the template disclosure form and use *their own* (often automated) internal processes to populate the form with customer-specific information. The draft Disclosure approach appears to take the opposite approach—using the IPA's semi-automated and highly rigid system to generate the Disclosure.

Specific comments on the Draft Disclosure Form

1. **Both introductions (pages 1-2)**

Most of the content on this first page is duplicative of and inconsistent with the information presented in the brochure. There is no reason to repeat information about the program and RECs in the Disclosure and the Brochure and it will confuse customers to have slightly different descriptions. A much better approach would be to refer back to the Brochure, which would reinforce the IPA's goal of the customer referring to the brochure.

The language on the first page is overly restrictive because it describes three pricing models as if they are the exclusive options:

> Community solar subscriptions may be structured 1) as an upfront payment for a portion of the electricity produced by a community solar project over time, 2) as a contract to pay scheduled, pre-determined payments for the electricity generated by a portion of a community solar project, or 3) as a contract to buy a fixed portion of the electricity generated from a community solar project at an agreed per-kilowatt-hour rate.

The Disclosure should allow the Approved Vendor to describe their model. The IPA already requires review of sample marketing materials; while the Joint Solar Parties believe that is overly burdensome the IPA will have an ability to review how an Approved Vendor describes their own projects. Coupled with the previous sentence, "Community solar subscriptions can be arranged in many different ways, with different terms, payments arrangements, and durations" would provide the customer with better, more actionable information.

> This disclosure form provides you with standardized information about your subscription. At the point when you decide to enter into a community solar contract, you will be asked to sign this form, indicating that the information in it has been provided to you. The form will be submitted to the Adjustable Block Program Administrator. The Program Administrator may contact you to verify that you received this form.

The above language is duplicative and common sense and should be removed.

> The purpose of this form is to provide you with clear and accurate information about terms of your community solar subscription, but this form is not a substitute for your contract. Do not rely exclusively on this form; you should read your contract closely before you sign it.
>
> At the end of this form, the community solar provider will have an opportunity to provide additional details or explanations related to the information contained in the form.

> You may rescind your community solar contract and receive a refund of any deposit you paid within three calendar days of signing a contract, by contacting the community solar provider.

This is duplicative of information on the previous page. In addition, the Joint Solar Parties are concerned that the IPA may be undermining its own required form in the eyes of the customer by immediately minimizing its importance.

2. Subscriber's Contact Information

While the Joint Solar Parties understand that disclosures are supposed to be customer-specific, it is not clear why the IPA needs full customer information for every single customer who receives an offer. The Joint Solar Parties are concerned that this government data collection, if known to customers, would undermine customer confidence in the program. The form requires upload of the customer's name, street address, phone number, e-mail address, utility, and electric supplier. The Joint Solar Parties note that only "home or personal telephone numbers, and personal email addresses" are considered "personal information" and thus exempt under Section 7(b) of the Illinois Freedom of Information Act. (*See* 5 ILCS 140/2(c-5) (defining "personal information") and 7(b) (exempting disclosure of "personal information").) Although Section 1-120 of the Illinois Power Agency Act contemplates the IPA providing "adequate protection" of "confidential information," it is not clear that the IPA considers this information to be confidential. Without regard to the IPA's ultimate decision on this matter, the Joint Solar Parties are also concerned that if customers knew that a state agency would collect and store their contact information as part of receiving an offer, customers—especially residential customers—will be less apt to ask for a contract.

In addition, it is not clear whether Illinois law (or laws in other states where Approved Vendors may operate) would require some form of release or consent from the *potential* customer in order for the Approved Vendor to share the *potential* customer's contact information with the IPA as part of the portal. The IPA may be putting Approved Vendors—or perhaps a subset, depending on laws in other states—in the position of securing affirmative consent from *potential* customers to provide their personal information to the IPA, just for the purpose of receiving a quote. The Joint Solar Parties urge the IPA in the strongest terms to reject such a consumer-unfriendly approach.

Setting aside privacy concerns, a global concern of the Joint Solar Parties is particularly well highlighted here: For entities that (initially or eventually) own tens of community solar facilities and seek to include as much as 75% small subscribers, the process of manually inputting information for each subscriber is extremely time-consuming and burdensome. Even assuming 100% up-time and functioning for the IPA's portal and no degradation in accessibility as multiple Approved Vendors attempt to do the same, the IPA's proposed portal approach will require an unnecessary amount of manual work to produce sufficient disclosure forms to even offer—much less sign—enough customers to fully subscribe the facilities. A far better approach would be to create a standard form that the Approved Vendor or system owner/operator could fill in through its own automated process.

From a form effectiveness perspective, the formatting of the contact information is a waste of valuable space. Other states allow a community solar provider (here, an Approved Vendor) to format the disclosure on their own letterhead, which contains the contact information of the provider and saves space on the form. This branding also helps customers to quickly identify the different offers and find the contact information of their provider without having to dig through the form. The Disclosure should also follow this format used in other states. At a minimum, however, the contact information should be formatted as a multi-column table to save space, particularly if the Approved Vendor and Community Solar provider are the same entity. In such cases we suggest the disclosure only contain one set of contact information rather than duplicating it.

3. Project Specifications

- The community solar project you are subscribing to is located at_____[address] in [county], Illinois
- The total size of the community solar project is_____kW AC
- **Size of your subscription_____ _kW AC**
- **Estimated gross annual electricity production in kilowatt-hours from your subscription in the first year_kWh**
- **Estimated annual production decrease of the community solar project:_____%**
- **Expected life of the community solar project_____years**
- **Expected overall percentage degradation over the life of the community solar project_____%**

Some of the information in the Project Specifications section may be unknown at the time of contracting. Because the IPA requires that all community solar facilities be fully subscribed (including with small subscribers) at energization to obtain the full REC payment for the facility, it is of the utmost importance for the facility to be fully subscribed before energization. Until construction is complete and the system has been energized, many of these items are subject to change. Such scenarios are not uncommon and the regulatory frameworks in other states typically support flexibility in the disclosure. In such cases, providers typically provide a statement to the effect that, "If any of this information is updated following the execution of your contract, the provider will provide you with notification."

Even if these values are known, it is unclear why the customer benefits from knowing the total size of the community solar project or the expected life of the project. By its statutory definition, a Subscription must be expressed in kW (AC)—as opposed to other calculations that might be dependent on the total facility size. In addition, the relevant information for the customer is the term of their subscription, not the project's expected life.

4. Contract Disclosure

As an initial matter, there is no separate heading for the contract specifications, which are different than Project Specifications. This change in topic should be clearly noted.

Secondly, all blue highlighted text will be extremely confusing for the customer for the reasons noted in Section I of these comments. Everything in blue highlight should instead follow a format similar to the NY or MD disclosure forms, which allow the developer to fill in the appropriate information based on their individual model.

There are several problems with the blue highlighted text that are particularly important to call out. On page 3, it states:

> **Note: Any other subscription models envisioned by community solar developers can be brought to the Program Administrator for evaluation for inclusion into the disclosure form.**

The Joint Solar Parties request that the IPA confirm that the "Note" sections be permitted to be deleted if not applicable to the customer's contract. This particular note is rather meaningless to the customer as it is not relevant to the contract in hand.

More fundamentally, the Joint Solar Parties are concerned about the IPA regulating what types of products may be marketed to customers. While the Joint Solar Parties are familiar with the IPA's concerns that the Adjustable Block program is spending ratepayer money (for which ratepayers benefit from the purchase of RECs), funds from all ratepayers are *not* going towards subscriptions themselves. In addition, overregulation of the net metering contract structure will stifle price innovation in Illinois. Given that Illinois is unique amongst states in that the (virtual) net metering is the responsibility of the supplier (and not the utility in all cases), Approved Vendors may need to adjust pricing structures to accommodate Illinois' approach. By reserving the right to reject an Approved Vendor's pricing approach in a private contract—a regulatory function unheard of in other competitive market contexts—the IPA will unnecessarily restrict the value received by customers from subscriptions to Adjustable Block program facilities.

> Community solar subscription structured as a contract to **buy a portion of the electricity** generated from a community solar project at an agreed per-kilowatt-hour rate over the term of the subscription:

While this statement is arguably consistent with Illinois' regulatory approach, a better description would be that community solar contracts are the right to receive a virtual net metering credit (measured in dollars) from the customer's energy supplier for the output (measured in kWh) attributable to the customer's subscription. The Customer never takes title to the electricity; the description incorrectly makes community solar sound like a wholesale energy transaction.

> The total of all your estimated payments over the course of the subscription, including any down payment, all payments, interest or escalators, and all fees: $

Respectfully, this disclosure harms the customer more than it helps the customer. First, by presenting total payments by itself and not in the context of total benefits, the IPA presents the subscription in an unfavorable light. Second, the IPA assumes that total payments can be accurately estimated, which is not the case for all products. For instance, if the subscription

charge was a fixed percentage of the customer's virtual net metering bill credit or all but X dollars of that bill credit, the customer is guaranteed to save. However, it is impossible to estimate with any accuracy the payments that the customer will make. More generally, estimated payments over the course of the subscription may be extremely difficult to predict over the term of the contract for products where payments depend on the size of the net metering credit or other factors that cannot be predicted in advance.

The Joint Solar Parties note that the IPA appears to be using a total payment as a proxy for the total value received by the customer. In many cases, however, products make that case within the product structure itself.

> The final subscription price per kilowatt hour is $.

This may not be known at the time of contract signing if the price is a floating discount to the value of credits, or any other number of variable rate products (which may or may not guarantee savings). Additional examples of products include a product sold at LMP (at the time of generation) minus a fixed amount, a percentage savings with a minimum per kWh payment, or other variability based on the size of the net metering credit or LMP.

> Are you able to avoid annual escalation rates by pre-paying some or all of your subscription payments? □Yes OR □No
>
> **Some community solar subscription contracts increase a customer's monthly payments on an annual basis to account for inflation and projected annual increases in electricity rates. These escalation rates compound, meaning they apply not only to the initial subscription payment rate, but also to the increases added annually. Please carefully review any escalation provisions in your contract.*

The Joint Solar Parties recommend that the note regarding the description of an escalator be deleted if the contract does NOT have an escalator. This extraneous information would likely confuse customers if it is not applicable.

> Under some community solar subscriptions, your per kilowatt-hour rate may be variable. For example, some contracts may guarantee a certain amount of savings each month or they may be tied to some other pricing schedule. Make sure you understand how your subscription payments will be calculated over time.

The above language is confusing and hard to understand. We recommend deleting this note, or allowing the Approved Vendor to describe in its own words if a savings is guaranteed.

- You will receive ELECTRONIC □ *OR* PAPER □ invoices

This option precludes the ability of a provider to allow the customer to select either paper or electronic invoices and does not seem worthy of a customer disclosure. If it is included, we recommend adding a third checkbox that signifies the customer has the choice of either.

> **Note: These prompts will only be provided if the "No" box is checked for whether the**

community solar project has already been selected for the Adjustable Block Program incentive.

We are unclear as to the purpose of this Note unless it is specifically for Approved Vendors and will not be included on the version to be provided to the customer.

> *Selection for the Adjustable Block Program is not guaranteed, but if the community solar project is selected by the Illinois Power Agency, the Approved Vendor, as the counterparty to a REC delivery contract with an Illinois electric utility, will receive payment(s) for the RECs associated with your subscription. The value of these REC payments may be reflected in the cost of your subscription.

The above language seems highly confusing and irrelevant to the customer. The customer needs to know their pricing, not the components that the Approved Vendor used to arrive at the pricing. However, the Joint Solar Parties do agree that if pricing depends on REC availability, that should be disclosed in the Approved Vendor's own words.

- Has the community solar project you are subscribing to already been constructed? □Yes *OR* □No
- If not, the approximate start date of project construction will be_____[date]
- If so, has the community solar project been energized and granted permission to operate by the utility? □Yes *OR* □No
- If not, the expected date of project energization is [date]
- The estimated month when you will start being credited on your electricity bill for the value of the electricity produced through your community solar subscription [date]

All of the information above is relevant to the project details, not the contract details. The Joint Solar Parties recommend moving this information to the Project Specifications section on page 3 of the Draft Disclosure. Some of this information, for example, the last two bullet points, may not be known at the time of contract signing and is (at least in part) out of the control of the project developer.

5. Net Cash Flow Estimate

This heading is not a user-friendly term. We highly recommend revising this to Estimated Net Benefits.

- Estimated **total** subscription savings calculations:
  [Here, three savings estimates will be presented to the customer—with low, middle, and high future electricity rate forecasts. The savings calculations will depend on how the community solar subscription is structured and will rely on the current default electricity supply price as the starting point with different potential future electricity rates and inflation forecasts. **The savings estimates will be automated based on form inputs.]**

The Joint Solar Parties strongly oppose requiring a savings estimate. While Approved Vendors should be allowed to make savings estimates and the Joint Solar Parties would not object to the IPA requiring certain standard assumptions in estimates (such as the low/medium/high forecasts), a savings estimate should not be required. For customers who are not required to

select a certain supply option, savings will depend greatly on their selection of energy supplier and may include confounding variables beyond the net subscription benefit. In addition, more complex products, such as a floating price with a floor or a floating price that guarantees savings over a certain period of time (for instance, every 12 month period) will be virtually impossible to model under the IPA's approach. Other products, such as providing a set percent discount off the value of the virtual net metering bill credits that a customer receives, are fundamentally based on guaranteed savings, making this exercise irrelevant and extremely confusing for customers. All of these models are valid products that could provide some customers great value. Also, for products that don't offer a fixed or defined level of savings, estimates can be misleading because they are virtually guaranteed to be incorrect. Discussing how savings are calculated, rather than estimating what they will be, would be a better approach.

If the IPA is going to insist on savings estimates, a far superior approach would be to have the IPA provide a standard estimate of net metering credits using assumptions about the QF rate (i.e. a high, medium, and low). Such information could be put in a 15-20 year table, so the customer can see their anticipated credit for each year. The customer can then compare the subscription price to the estimated net metering benefit. The Joint Solar Parties also would not object to a note that ComEd—for now—offers a higher net metering credit that includes capacity, but may not do so in the future. Stylistically, the Joint Solar Parties suggest that the product pricing description—which may in some cases require a narrative—be provided side-by-side with this information.

The advantage to this approach is whatever the pricing approach is that the customer can use the IPA's standard information about anticipated virtual net metering credits to compare the price to the benefit whether it is a fixed rate, a fixed savings (by rate or dollars), a variable rate, or a multi-layered product such as a variable rate with a minimum savings guarantee (but not a fixed savings percentage) or an index-based rate with a floor. In addition, because the estimated credits will be standardized (at least within ComEd, Ameren, and MidAmerican—perhaps additional information will be necessary for other utilities), each customer will see the same potential net metering credit information and will be able to compare the pricing approach to the credit. Reinforcing the point above, if the Approved Vendor is given the leeway to fully describe their product in their own words, customers will be able to make a full comparison. This will put a premium on products that can be described in simple terms or that guarantee a savings.

As noted above, while the RECs for these facilities are being procured by the IPA on behalf of utilities that will use ratepayer funds to fund the REC payment obligations, not a single dime of funds collected from all ratepayers will be expended on the Subscription itself. While the community solar facility is certainly part of the Adjustable Block program, the other revenue streams (specifically tax equity and energy) are not compensated through the Adjustable Block program. They are compensated through voluntary transactions that may not even include the Approved Vendor as a party (if the Approved Vendor is not the initial or long-term owner/operator) and certainly does not include the IPA or utilities as a party. While the Joint Solar Parties appreciate the IPA's concern about bad market actors, the IPA has plenty of tools at its disposal—from review of marketing materials to its marketing guidelines to required

minimum contract terms—that do not require the IPA itself to make a standard savings calculation.

The Joint Solar Parties note that the proposed approach above is fully consistent with the Final Approved LTRRPP. In that document, the IPA describes the disclosure in relevant part as including:

> The form will also include a standardized estimate of the price and performance of the system as installed, including anticipated first year production, expected annual system production decreases, expected overall percentage degradation over the life of the system, a standard forecast for retail electricity prices, a net cash flow analysis, and a target rate of return of each project

(Final Approved LTRRPP at 124.) The Joint Solar Parties' proposal includes an estimate of cash in (the QF rate) and a description of the cash out (narrative describing subscription charges), which collectively is an analysis of the net cash flow. The term "analysis" does not and should not be reduced to a standard analysis solely controlled by the IPA. The Joint Solar Parties note that the IPA did not identify in the LTRRPP litigation to receive detailed pricing information from Approved Vendors to put into a non-negotiable IPA proprietary savings model—with the apparent right to reject a product or pricing approach. Had the IPA done so, the Joint Solar Parties would have vigorously litigated the issue.

> **The savings calculations above are estimates based on a standard forecast for retail electricity prices, using the following assumptions:*

If the IPA accepts the Joint Solar Parties' comments above, this language will be rendered moot because instead of a savings calculation there will be a side-by-side comparison of estimated virtual net metering benefits and a description (however fashioned by the Approved Vendor) of the pricing. Once again, the IPA insisting on calculating savings based on a proprietary model under which the IPA approved specific products would be a disaster for the market. However, if the IPA persists down this pathway, the Joint Solar Parties request sufficient information on any standardized forecast information that will be used to review and critique the IPA's proposed model.

Community Solar Brochure

The Joint Solar Parties propose the following changes to the Brochure to improve readability and customer understanding of key community solar terms and concepts.

What is community solar?
Community solar is an arrangement where several customers subscribe to a single large PV system. By subscribing, individual customers, potentially including both residential and business customers, **offset their own electricity use with a portion of the electricity generated by that community solar system**. The project might be close to the customer or it might be many miles away, but it must be in the same utility service territory as the customer. Subscriptions may take different forms, as described below.

With community solar, **your electricity use is offset by the electricity generated by a specific PV system**, and your subscription is only with that PV system. In many cases, absent the support of its subscribers, that community solar system would never have been constructed—meaning that by subscribing to a community solar project, you are helping support the development of new solar energy generation in Illinois.

Regarding the bolded font in the section above, customers receive monetary credits on their bill, and these credits offset charges on their electric bill. Depending on the customer's product (for instance, on ComEd's Residential Real-Time Pricing Program), the payment is not 1:1 per kWh offset. Instead, the IPA should use the statutory language, which requires the electricity provider to credit the customer at the "energy supply rate," which they should request from their current and future electricity provider.

Community solar is not the same as ~~an~~ a "green" or "renewable" supply offer from an Alternative Retail Electric Supplier. While supply offers from Alternative Retail Electric Suppliers vary, the "green" component of that offer is generally satisfied through renewable energy credits (or "RECs", as described below) acquired by your supplier from a renewable energy generator. ~~Absent express contractual requirements in your "green" supply offer, those RECs may not be from solar generation or even from renewable energy generation located in Illinois and may be from energy generation developed many years ago.~~ When you buy RECs from an Alternative Retail Electric Supplier you are buying the "green" attributes of electricity that has been generated to the grid.

If the community solar project that you subscribe to participates in the Adjustable Block Program, the RECs from the project will be transferred to an Illinois electric utility. ~~You should not claim that you're using renewable electricity, but rather that by having a subscription to a community solar project~~ When you subscribe to a community solar project that sells its RECs into the Adjustable Block program, you are not buying or using renewable electricity, but you are contributing to the development of renewable solar power in Illinois.

What information will you receive before you sign a contract?

Before you sign a contract to subscribe to a community solar project, the community solar provider is required to provide you with a Standard Disclosure Form provided by the Adjustable Block Program as well as this Brochure. ~~This form includes contact information for everyone who has a part in your solar contract, information about the community solar project itself, the application process, and a standardized estimate~~

~~of how much money you may save. Review this form carefully.~~

When deciding to participate in community solar, what are your subscription options?

Subscriptions vary. ~~In some cases, you might subscribe by paying upfront and buying an ownership share of particular panels in the array (and their associated electricity output), or a share of the energy that will be produced over time by the entire array. In other cases, you might pay a monthly subscription fee for as long as you participate in the project. As a further alternative, you might simply pay a set price for each kilowatt hour of electricity that the project actually generates.~~ **Read the Disclosure and your contract carefully,** and here are some things to think about when signing a community solar subscription contract:

- If you're paying upfront, how much is your upfront payment? ~~Will you take out a loan to make the payment? What are the terms of the loan and how do those loan payments compare to reductions in your monthly electric bill?~~

The language removed in the bullet point above is applicable to rooftop solar but would be generally irrelevant to community solar.

If you sign up for community solar, what factors affect whether you save money?

You are **not** guaranteed to save money unless your contract explicitly includes a guarantee that you will save money. ~~In most cases, the~~ It is important to consider the questions listed below, as they may ~~will~~ affect whether you save money, and if so, how much. Some of these questions you can answer for yourself, while others can be answered by the community solar provider or the sales agent.

  - What per kilowatt-hour (kWh) rate are you paying for electricity ~~without solar~~?
  - The higher the energy supply rate you are paying for electricity before you go solar, the more money you can potentially save. The per kWh rate you pay may vary depending on whether you buy electricity from your utility or buy electricity from an Alternative Retail Electric Supplier.
- ~~How much electricity will~~ What subscription size should you receive from the community solar project? Is this the right amount, given how much electricity you use?
  - ~~If your contract provides more electricity than you use over the course of a year, you may not necessarily receive credit for all of the electricity it generates.~~
- ~~Will~~ Do you expect that the retail price of electricity will increase or decrease in coming years? By how much?
  - The more the energy supply rate ~~retail price of electricity~~ increases, the more money you can potentially save with solar. If the retail price of electricity decreases, participating in community solar may offer reduced savings or may not save you money at all.
- How likely are you to move out of the service territory of your utility ~~before~~ within the term of your community solar contract ~~expires~~?
  - If you move within your utility service territory, you will be able to keep your community solar subscription, subject to utility tariff requirements and the terms of your subscription. If you move out of your utility service territory, you might need to find someone else to take over your subscription, or you might need to pay a termination fee (if there is an early termination fee).

The Joint Solar Parties strongly recommend that the IPA stick to the statutory language of energy supply rate, otherwise customers will (incorrectly) assume that they will receive their full retail rate in the virtual net metering credit. This is demonstrably false even for ComEd and Ameren default rates available to Small Subscriber-eligible classes—ComEd does not include transmission, and Ameren includes neither capacity nor transmission.

In addition, the Joint Solar Parties believe the IPA made an error suggesting that the virtual net metering credit is capped at the customer's total bill. This is at minimum not true for ComEd under Rider POGCS, which allows customers to cash out their net metering credit at any time and places no ongoing restrictions on virtual net metering credit value (although ComEd does have an initial screen on subscription size based on the customer's previous 12 months of usage).

> **What is net metering and how do I enroll?**
>
> Net metering is the method for measuring the electricity a PV system produces and crediting you for that generation. It is available for both PV systems located at your home or business as well as for subscribers to community solar projects. As part of your subscription to a community solar project, you will be automatically enrolled in net metering**.** Your supplier will calculate your net metering credits based upon your energy supply rate and the generation from your share of the community solar project. You may want to review your electric bill to ensure the accuracy of those calculations. If you have questions about your community solar net metering credits or value, you should contact your electricity supplier. There may be a lag of a month or two before your net metering credits appear on your bill. If you change suppliers, you will be reenrolled in net metering with the new supplier.
>
> **Consumer rights**
>
> You have the right to maintain your subscription if you move to a different home or business location in the same utility service territory. You also have the right to assign or sell the subscription to another person within your original utility service territory, without having to pay a fee to the community solar provider, subject to certain limitations under law and that may be in your contract.
>
> **In order for a community solar project to participate in the Adjustable Block Program, an Approved Vendor will apply to the Illinois Power Agency for the system to be part of the program. ~~(~~The Approved Vendor will be identified on the Standard Disclosure Form you receive before you sign your contract and may not be your community solar provider.~~)~~ If you sign up for a community solar subscription, you have a right to request information about this process, including the system's application status within the Program and how much the utilities are paying for the RECs from the system. Some of that information will be included on the Standard Disclosure Form.**

The bolded paragraph above seems duplicative to the Disclosure Form. We suggest deleting it in the interest of avoiding redundancies.

The Joint Solar Parties note that the language in the brochure is in direct conflict with the Final Approved LTRRPP, which *requires* that contracts include: "Contract provisions regulating the disposition or transfer of a subscription, as well as the costs or potential costs associated with such a disposition or transfer." (Final Approved LTRRPP at 152 (drawing from MD required contract terms).) The LTRRPP does not merely allow these terms—it requires them. Section 18(b) of the marketing guidelines correctly effectuates this requirement of the LTRRPP.

In addition, Section 1-75(c)(1)(N) of the IPA Act requires that:

> Any [LTRRPP] approved by the Commission shall allow subscriptions to community renewable generation projects to be portable and transferable. For

> purposes of this subparagraph (N), "portable" means that subscriptions may be retained by the subscriber even if the subscriber relocates or changes its address within the same utility service territory; and "transferable" means that a subscriber may assign or sell subscriptions to another person within the same utility service territory.

(20 ILCS 3855/1-75(c)(1)(N).) Nowhere in the LTRRPP does the IPA state or suggest that the customer has an unlimited right to move or sell its subscription without any restriction; as noted above, the LTRRPP specifically contemplates restrictions and is self-contradictory on costs (*compare* Final Approved LTRRPP at 152 (quoted supra) *with id.* at 153 (suggesting that no fee may be required).

In addition, the Joint Solar Parties believe the IPA is incorrect as a matter of law and policy suggesting that a customer has an unlimited right to assign their contract. First, as a matter of law, a residential customer cannot assign their subscription to another customer for whom the anticipated subscription output is greater than 110% of the assignee customer's last 12 months of usage (at least in the ComEd service territory). This is a non-trivial matter, especially after a mild summer when all customers' last 12 months of usage will be unusually low.

In addition, the IPA should not go beyond statute and preclude reasonable restrictions on subscription assignment by the subscriber. For instance, a customer should not be allowed to assign freely to another customer that is a substantially greater credit risk. In addition, if the assignee does not understand the subscription or the subscription was assigned through deception or fraud by the *customer* (not the Approved Vendor or owner/operator), the IPA should not suggest that the Approved Vendor or owner/operator must accept that assignment. The Joint Solar Parties believe it would be ironic if the IPA held developers to an abnormally high (relative to other states) standard for marketing but force Approved Vendors or owner/operators to accept an assignment when minimal diligence would have discovered an issue.

> ~~The Approved Vendor must be responsive to any issues related to ensuring that the community solar system is generating electricity and RECs.~~

If the customer is not receiving RECs, it is unclear why the Approved Vendor should be responsive to the customer about issues regarding generating RECs. In addition, the Subscription may only entitle the customer to such electricity as is generated—not a minimum level over any period of time. Furthermore, it is not clear what it means to be "responsive to" such issues. As a general matter, the Joint Solar Parties strongly encourage the IPA to place requirements on Approved Vendors or system owners on the Approved Vendors or system owners themselves—not hidden in a standard brochure directed at customers.

Draft Marketing Guidelines for Community Solar

The Joint Solar Parties recommend the following edits and provides the following comments on the Draft Marketing Guidelines for Community Solar.

> **This document provides marketing guidelines for Approved Vendors in the Illinois Power Agency's Adjustable Block Program ("ABP") and their employees, contractors, and subcontracting or partnering solar installers and marketers.** Although distributed generation ("DG") projects are also part of the ABP, this document applies specifically to community solar projects and not to DG systems. (A different set of guidelines has been published for DG systems.) These guidelines are written for the use of Approved Vendors and their partners. The first section will also be used by the Program Administrator, who will be reviewing ~~and approving the~~ sample marketing materials.

The Joint Solar Parties strongly believe that the IPA should be more specific regarding the application of these guidelines, clarifying that *any entity creating customer-facing materials* regarding the Adjustable Block Program ("ABP") should be expected to adhere to these guidelines. This would include but not be limited to utilities, municipalities, Citizens Utility Board, Elevate Energy, and any other Illinois energy stakeholders, including the IPA itself and the Program Administrator. It is essential that all entities creating customer-facing materials be held to the same set of standards and guidelines.

Additionally, the language stating that the Program Administrator will be approving marketing materials is inconsistent with the final Approved Vendor Application and Standards and should be removed. The final Approved Vendor Application and Standards require Approved Vendors to attest:

> "g. I agree to provide samples of marketing materials or content used by our company, or our subcontractors/installers and affiliates, to the Program Administrator for review upon initial qualification as an Approved Vendor. In addition I will provide copies of any marketing materials related to the sale, financing, or installation of solar photovoltaic systems that will apply to participate in the Adjustable Block Program itself, whenever requested by the IPA or Program Administrator. I furthermore agree to make changes to marketing materials requested by the IPA or Program Administrator in their efforts to ensure that such materials are not deceptive, confusing, or misleading, and to further ensure that such materials do not feature misrepresentations about our relationship to the Illinois Power Agency or the Adjustable Block Program."

While the Program Administrator will be reviewing sample marketing materials and Approved Vendors agree to make any changes requested to ensure that these materials are not deceptive, etc., there is no program requirement that marketing materials receive approval prior to use.

A global issue the Joint Solar Parties noticed throughout the document: there should be a timeframe for the Program Administrator to review sample materials and provide responses within a reasonable amount of time. The Joint Solar Parties recommend seven business days. This will prevent costly hold-ups while Approved Vendors (at least those that elect to do so) provide samples and await a response while valuable time before project energization passes. Because marketing campaigns typically require substantial advance notice, any delay related to waiting for IPA review has a cascading effect.

Guidelines for marketing materials

1. Approved Vendors and their agents and subcontractors shall not make any demonstrably false or misleading statements.
2. Approved Vendors and their agents and subcontractors shall accurately portray the nature of solar power,

renewable energy credits ("RECs"), community solar, and the ABP. Approved Vendors shall disclose their intent to sell the project's RECs into the ABP by providing the program brochure to the potential customer and not making statements inconsistent with the brochure. ~~Should an Approved Vendor have any questions about whether a particular statement constitutes an accurate portrayal, the Approved Vendor should first submit that statement to the Program Administrator for review.~~

As the Program Brochure provides information on RECs, providing this brochure to customers should accurately disclose the transfer of RECs in the ABP. If an Approved Vendor or related developer or owner/operator is not selling their RECs through the Adjustable Block program, these guidelines emphatically do not apply. If the last sentence is kept, there should be parameters on how quickly the IPA will respond to those questions, ideally within five business days. Five business days is standard in many markets that have some sort of pre-approval requirement. Additionally, this review should be strictly optional and triggered only if there is a question from a developer that requests the Program Administrator (PA) to review.

a. What is the Adjustable Block Program?
    i. The Illinois Adjustable Block Program is an incentive program that supports the development of new solar photovoltaic ("PV") systems in Illinois through the purchase of RECs. It enables the sale of RECs produced by PV systems to Illinois utilities. Payments vary depending on the size of the system and where it is located.

The statement above in part 2.a.i. is different than the language that is used in the brochure. We recommend standardizing this language throughout all materials.

    ii. Examples of statements companies may not make related to the ABP.
        1. "The ABP guarantees that you will save money."
        2. "We represent the ABP."
    iii. Examples of statements companies may make related to the ABP.
        1. "The ABP is a state program that provides an incentive for solar PV systems."
        2. "If you sign a contract with us, and our application to the ABP is successful, the community solar project you subscribe to will be part of the ABP."
    iv. Companies may not make any demonstrably false or unsubstantiated statements about the ABP.
    v. The ABP will be releasing consumer-facing branding for the ABP in the near future, and at that time these guidelines will be updated to reflect the usage of that brand.

b. What are RECs and why are they valuable?
    i. RECs are created when renewable energy generation, including solar panels, generates electricity, but RECs are not the electricity itself. Instead, RECs represent the environmental attributes of that electricity. RECs can be bought and sold, and whoever owns the RECs has the legal right to say they used that "clean" or "renewable" energy. Under Illinois law, utilities are required to supply a certain amount of their energy from renewable sources through the purchase and retirement of RECs. If the RECs from a community solar project are transferred to a utility through the ABP, then neither the community solar provider nor the subscribers to that project can claim to be using clean or renewable electricity. Thus, Approved Vendors and their subcontractors may not suggest that customers subscribing to projects that sell RECS will receive or use renewable electricity.

The language in part 2.b.i. should conform to what is used in the brochure and standardized across materials.

    ii. Examples of statements companies may not make related to RECs and the energy

produced by the system.

1. "Your home will run on cleaner, greener energy."
2. "The sun will provide your electricity."

iii. Examples of statements companies may make related to RECs and the energy produced by the system.

1. "The renewable attributes ("RECs") of this electricity will be sold by us to keep the cost of your subscription affordable."
2. "This community solar project will create energy from the sun."
3. "By subscribing to this community solar project, you will contribute to the development of new solar power."

iv. Companies may not make any demonstrably false or unsubstantiated statements about RECs.

v. When the consumer-facing branding of the ABP is released, these guidelines will be updated to include examples of statements that may be made related to the brand name.

Part 2.b.v. above does not appear to be guidance but rather a program update. We recommend removing it from the guidelines.

c. ~~Will solar save money for the customer?~~ Savings claims.

i. All terms and values in the marketing materials, including terms and values related to escalators, financing terms, and rates, must be consistent with terms used in the Standard Disclosure Form and the contract.

ii. All terms and values related to system production that are used to estimate the customer's economic benefits ~~financial return~~ in the Standard Disclosure Form must be consistent with the system production terms and values that are submitted to the Program Administrator and used to calculate the number of RECs that the system will produce.

iii. All marketing materials must be consistent with the ABP Community Solar Informational Brochure, and, in particular, with the following items from the brochure:

1. That customers are not guaranteed to save money with solar unless the contract includes an explicit savings guarantee; That the Standard Disclosure Form for subscriptions under 25 kW will include a standardized savings estimate~~ that will enable customers to compare offers between vendors~~.

As webinar participants noted, it is impossible to have standardized language without providing underlying standards, otherwise each Approved Vendor's standards may be different. For example, while the utility rate escalation they choose may be the same from contract to contract (standardized), it may be markedly different from other developers. As noted in the Joint Solar Parties' comments on the Disclosure Form, the savings estimate should instead be a side-by-side comparison of a standardized estimated credit next to a description of the costs.

Also, the Joint Solar Parties strongly recommend against using the term "financial return." Subscriptions are not a security, mutual fund, bond, etc. It is an energy product that under certain circumstances (or according to contract) will provide savings on a customer's utility bill. The Joint Solar Parties also recommend that the IPA not give the unintended impression of a state-sponsored securities offering.

iv. Examples of statements that companies may not make related to whether customers will save money.

1. "You will save money if you subscribe to this project." (This statement is permitted if the contract includes an explicit savings guarantee.)
2. "Every customer who subscribes to a community solar project saves money."

v. Examples of statements companies may make related to whether customers will save

money.

1. "We expect many electricity customers in Illinois will save money by subscribing to a community solar project."
2. "Our best estimate is that you will likely save money if you subscribe."

vi. Companies may not make any demonstrably false or unsubstantiated statement about whether solar will save customers money.

d. Community solar marketing agents **shall emphasize** to prospective subscribers that value from their subscription agreement is primarily realized through net metering, and that enrollment in net metering will take place as part of the subscription enrollment process. **The value of net metering credits will depend on the subscriber's ~~electricity~~ energy supply rate.** There may be a lag of 1-2 billing cycles before net metering credits appear on the subscriber's bill.

We are unclear about how marketing agents "shall emphasize" that value from their subscription agreement is primarily realized through net metering, and that enrollment in net metering will take place as part of the subscription enrollment process. It would be helpful to have more concrete guidance on how this should work, in practice.

In addition, the value of net metering credits may or may not depend on the subscriber's supply rate so the second bolded statement above may not be accurate. For instance, consider a customer on ComEd Rate BES—the basic bundled supply rate. If on January 1 the transmission charge goes way up but the rest of the rate (including PEA) remains equal, the customer's rate will be higher but the bill credit pursuant to Rider POGCS will be exactly the same because transmission is not included. The IPA should use the statutory term of "energy supply rate" for better accuracy.

3. Approved Vendors and their agents shall accurately portray their identities and affiliations.
   a. All materials **shall reflect that** the Approved Vendor, or the Approved Vendor's agent, is not employed by, representing, endorsed by, or acting on behalf of a utility or a utility program, a consumer group or consumer group program, or a governmental body, except in those cases where the Approved Vendor is a consumer group or governmental body. Approved Vendors and their agents shall refrain from making false claims or creating false impressions regarding their identity and/or affiliations.
   b. Use of utility name and logo
      i. An Approved Vendor or its agent shall not use the logo of a public utility, the Illinois Commerce Commission ("ICC"), the Illinois Power Agency ("IPA"), the State of Illinois, or the ABP in any manner, except the following:
         1. An Approved Vendor may use the IPA logo on materials that have been created by the IPA, including the ABP Community Solar Informational Brochure and the Standard Disclosure Form.
      ii. An Approved Vendor or its agent shall not use the name of a public utility, the ICC, the IPA, or the State of Illinois in any manner that is deceptive or misleading, including, but not limited to, implying or otherwise leading a customer to believe that an Approved Vendor is soliciting on behalf of, or is an agent of, a utility, the ICC, or the IPA. For avoidance of doubt, an Approved Vendor can state the fact that it is an Approved Vendor under the IPA's Adjustable Block Program.
      iii. An Approved Vendor or its agent shall not use the name, or any other identifying insignia, graphics or wording that has been used at any time to represent a public utility company, the ICC, or the IPA, or their services, to identify, label or define any of its offers. This does not, however, restrict use of a utility name in describing where an offer is valid.
      iv. IPA and the ABP Program Administrator will address any requests for exceptions on a case-by-case basis.

Guidelines for marketing behavior

1. These guidelines apply not only to Approved Vendors but also to their agents and subcontractors and any entity involved in customer-facing aspects of the sales and marketing of community solar subscriptions. Approved Vendors are responsible for taking reasonable measures to ensure agents and subcontractors comply with these marketing guidelines. For the purpose of the following guidelines, any reference to "Approved Vendor" should be understood to apply to their employees, contractors, and subcontracting or partnering solar installers and marketers of community solar subscriptions.

As noted above, the Joint Solar Parties strongly believe that the IPA should be more specific regarding the application of these guidelines, clarifying that *any entity creating customer-facing materials* that has a connection to the Adjustable Block Program ("ABP") should be expected to adhere to these guidelines. This would include but not be limited to utilities, Elevate Energy (an entity retained by the IPA), and any other Illinois energy stakeholders connected to the Adjustable Block program or an Approved Vendor, including the IPA itself and the Program Administrator. It is essential that all entities creating customer-facing materials be held to the same set of standards and guidelines.

However, one exception to this rule should be brokers or consultants retained by the customer to analyze various subscription options. These entities represent and have a contractual relationship with the customer even though their analysis and advice is customer-facing.

2. Approved Vendors shall comply with all existing local, state, and federal laws.
3. Customers shall not be required to sign up for (or maintain service from) a specific Alternative Retail Electric Supplier ("ARES") as part of their community solar subscription contract, unless the contract provides that a customer may cancel the community solar subscription contract without penalty upon ending service with that ARES.

4. Unfair, deceptive, or abusive acts or practices
    a. Approved Vendors shall conduct all aspects of their business that touch on customers or their interests without any unfair, deceptive, or abusive acts or practices ("UDAAP").
    b. Approved Vendors shall regularly examine and consider the possibility of UDAAP violations in all aspects of their business that touch on customers or their interests, including but not limited to marketing, sales, origination, contract terms, contract options, installation, servicing, and loss mitigation.
5. Advertising
    a. No advertising claim by any Approved Vendor should be deceptive or misleading, whether by affirmative statement, implication or omission, including claims:
        i. About products or services.
        ii. About pricing, quality and performance.
        iii. Made in print, electronic, verbal, and any other medium.
    b. All claims must be based on factual, verifiable sources.
    c. Approved Vendors should be familiar with all advertising laws, rules, regulations and guidance, including Federal Trade Commission guidance on advertising and marketing.
    d. Approved Vendors should avoid referring to a community solar subscription as "free" in oral or written marketing or sales discussions unless the customer will not pay anything for the ~~electricity and other~~ benefits they receive from the community solar subscription contract.
6. Sales and marketing interactions
    a. Approved Vendors shall comply with, and shall ensure that all of their employees, agents and contractors comply with, any and all federal, state, and local laws regarding restrictions on contacting its customers, including but not limited to the federal Do Not Call Registry, the CAN-SPAM Act of 2003, the

Telemarketing Sales Rule, the Telephone Consumer Protection Act of 1991, and any analogous state or local laws. This includes provisions related to:

i. Prohibitions against manually dialed calls to wireless numbers;
ii. Call time restrictions;
iii. Call curfews and banning calls to customers on statutory holidays or during a declared state of emergency;
iv. Not autodialing or texting wireless numbers without prior **express written consent** as that term is defined in the TCPA and interpreted by the FCC;

The Joint Solar Parties request clarification that the IPA is not trying to expand federal law, and is simply trying to restate from (a) that the TCPA applies (to the extent it applies).

v. Limitations on the length of time callers may allow phones to ring;
vi. If using automated or prerecorded messages, ensuring compliant opt-out mechanisms are available, including a toll-free number to allow customers to easily opt-out of future calls;
vii. All applicable email requirements, including properly identifying the type of email and opt out provisions.

b. Any community solar provider for a project that is or seeks to be part of the ABP must respect the wishes of customers who do not want to be contacted by maintaining accurate and current "do-not-contact" lists of such customers and by requiring its subcontractors to maintain such lists.
   i. Companies with "do-not-contact" lists that receive customer "do-not-contact" requests through an employee, agent or contractor must add the customer to their "do-not-contact" lists.
   ii. Companies with "do-not-contact" lists must ensure that employees, agents and contractors (e.g., solar lead generators) have access to up-to-date "do-not- contact" lists, and that they comply with all laws and ABP program guidelines regarding sales and marketing interactions.
   iii. Companies with "do-not-contact" lists must have reasonable protocols to ensure that employees, agents and contractors do not initiate contact with customers on their "do-not-contact" lists.
   iv. For companies with "do-not-contact" lists, their agents and contractors may contact customers previously listed on a "do-not-contact" list who later initiate contact with Companies, their agents or contractors, but subject to all applicable local, state and federal limitations on the breadth of such contact.
c. Approved Vendors and their agents and subcontractors must conduct business affairs with the goal of openness and transparency and not seek to take advantage of or otherwise exploit a customer's lack of knowledge. If an Approved Vendor or its agent or subcontractor becomes aware that a customer clearly misunderstands a material issue in a solar transaction, the Approved Vendor should correct that misunderstanding.

7. The following materials and information shall be provided to the customer at the indicated steps of the process:
   a. The ABP Community Solar Informational Brochure must be presented to the customer at the first contact between the Approved Vendor and customer that occurs in person or online.

The Joint Solar Parties strongly recommend that the brochure only be presented once, before the contract is signed, rather than twice. The Joint Solar Parties are unaware of any other state that requires any disclosure be repeated twice, much less an unchanging standard brochure that should be available centrally on the IPA's website and on Approved Vendor websites for customer review. The IPA should also allow Approved Vendors or their marketing agents to provide links to critical documents.

   b. If first contact between an Approved Vendor and customer is by telephone or direct mail, the ABP Community Solar Informational Brochure shall be included at first (if any) follow-up that takes place in person or online.

c. ~~The ABP Community Solar Informational Brochure shall be given to the customer again prior to the execution of any contract, at the point in time at which the contract is executed.~~ The ABP Community Solar Informational Brochure must be delivered to the customer along with the contract when the contract is executed.

d. A completed disclosure form must be ~~delivered~~ presented prior to or at the same time that the contract is signed ~~to the customer before the contract is signed~~. The customer must be given the opportunity to review the disclosure form with a representative or agent of the Approved Vendor if they desire. ~~A representative of the Approved Vendor shall review the disclosure form with the customer before the customer signs it and provide the customer with an opportunity to ask questions about the disclosure form.~~ An electronic signature is permitted.

e. The ABP Community Solar Informational Brochure and Standard Disclosure Form may be delivered to the customer electronically~~, but these two documents must be delivered to the customer as attached files to an e-mail (and not merely hyperlinked)~~.

f. In the event that a customer is enrolled through opt-out municipal aggregation pursuant to Section 1-92 of the Illinois Power Agency Act, the Brochure need only be sent once and need not be signed, but must be sent along with the Disclosure with the opt-out notice.

The requirement that documents be delivered as attached files to an email (and not merely hyperlinked) is unworkable from a practical perspective. Most automated email systems don't allow attachments to be included, which means that Approved Vendors would be unable to use any kind of bulk email outreach as first contact with potential customers. This is unduly burdensome given that there is no appreciable difference between attaching electronic versions of the brochure and disclosure form and linking to them. Furthermore, emails with attachments and PDFs are much more likely than those with hyperlinked URLs to be routed straight into a Junk Mail folder, decreasing the likelihood they will be read by customers. Approved Vendors should be allowed to exercise their discretion on method and form of delivery of these documents.

In addition, the IPA appears to assume that customers will have internet access. While common, internet access is not universal. Thus, unless the IPA seeks to force an in-person solicitation for all persons without access to the internet, the requirement that a brochure be sent either electronically or presented in-person is impractical. Once again, a better approach would be to provide the brochure at contract signing.

In addition to these technical concerns, the Joint Solar Parties have general implementation concerns. The JSP are deeply troubled by not only the text of the marketing guidelines related to customers signing the program brochure but also the IPA's interpretation during its session on November 30, 2018. As the JSP understand it, the IPA—if it does not alter its approach—would require that all customers be provided a copy of the brochure during the "first impression," that the customer must sign *that brochure*, and that the customer must again sign the brochure at a separate contact to sign the contract.

If there is one message that the Joint Solar Parties wish to clearly convey to the IPA, it is that customers generally speaking are wary of signing documents early in the process or signing the same document repeatedly. To many customers, this looks like scamming behavior.

By requiring a customer to sign (even eSign) that they have received the first brochure imposes a substantial burden on the customer. The customer—who may have a healthy skepticism at first contact before learning more about the program through sources including the Brochure—must save that copy of the brochure and sign it. The customer will be told at contract signing that she or he must sign the brochure again. Even if the customer is told that it is a program requirement, many customers will be immediately leery that they are being scammed if they are forced to sign the same document twice.

In addition, this requirement effectively eliminates e-mail-based marketing. E-mail has many benefits, including that the Approved Vendor or its agent commit their sales pitch to writing so that there is easy resolution of disputes over what was said—or what the (potential) customer received. However, if the customer must either print the document and affix a wet signature or go to a company website and eSign *before they are even offered a contract* is confusing and burdensome to the customer. The customer will wonder what they are signing and why—especially when they have to sign (or eSign) the same document again at contract signing.

By requiring affirmative signature, the IPA is also foreclosing the possibility of a community solar subscription as part of opt-out municipal aggregation. Under opt-out municipal aggregation, an ARES is selected by a municipality, county, or township may enroll customers on an opt-out basis. The customer never affirmatively signs a contract. A municipality that wishes to include subscriptions as part of the opt-out ARES supply product would be barred from doing so under these marketing guidelines—an illogical outcome, given: (1) elected officials' involvement in oversight of the product offered, (2) highly competitive pricing that frequently meets or beats default service pricing, (3) short-term contracts that require affirmative action by elected officials to continue, and (4) a complete lack of in-person or telemarketing solicitation. These features would appear to alleviate many of the IPA's stated concerns about marketing and solicitation from automatic renewals to ARES pricing. The IPA should carve out an exception for subscriptions included as part of opt-out municipal aggregation.

If the IPA persists in requiring the Brochure to be provided on two different occasions, a much more sensible approach is to provide proof that the customer *received* the brochure at the initial impression.

8. In-person solicitation
    a. An Approved Vendor's agent or representative shall state that he or she represents an independent community solar provider offering community solar subscriptions and that he or she is not employed by, representing, endorsed by, or acting on behalf of, a utility, or a utility program, a consumer group or consumer group program, or a governmental program or government body (unless the Approved Vendor or the community solar provider is a governmental body or consumer group). The agent shall state the company s/he works for.
    b. In the absence of local ordinances or regulations, Approved Vendors and their agents or representatives shall not conduct in-person solicitation at residential dwellings before 9:00 a.m. or after 7:00 p.m. Pre-arranged consultations or meetings outside of these hours are permitted.
    c. The Approved Vendor agent or representative shall obtain consent to enter multi-unit residential dwellings. Consent obtained to enter a multi-unit dwelling from one prospective customer or occupant of the dwelling shall not constitute consent to market to any other prospective customers in the dwelling without separate consent.
    d. Each Approved Vendor and its subcontractors shall perform criminal background checks on all employees and agents engaged in in-person solicitation. The Approved Vendor shall maintain a record confirming that a criminal background check has been performed on its employees or agents in accordance with this Section. For in-person solicitations with potential customers, the Agency strongly discourages the use of employees or agents with criminal records for offenses related to fraud or violence, or that are subject to registration under the Illinois Sex Offender Registration Act (730ILCS 150) or comparable registration requirements from other states. The Approved Vendor or subcontractor should use their reasonable judgement in evaluating the suitability of any other employees or agents with records for other offenses for in-person solicitations and is not prohibited from otherwise employing persons with criminal records or using such persons for in-person solicitations.
9. Telemarketing
    a. In addition to complying with the Telephone Solicitations Act [815 ILCS 413], an Approved Vendor's agent or representative who contacts customers by telephone for the purpose of signing up customers for community solar subscriptions shall provide the agent's name and identification number. **The Approved Vendor agent shall state that he or she represents a community solar provider. An Approved Vendor's agent or**

representative shall not state or otherwise imply that he or she is employed by, representing, endorsed by, or acting on behalf of, a utility or a utility program, a consumer group or a consumer group program, or a governmental body or a program of a governmental body (unless the Approved Vendor is a governmental body or consumer group).

The Joint Solar Parties agree with the bolded text above and recommend that it be replicated for in-person solicitations in Section 8.a. above.

b. Any telemarketing solicitations that lead to a telephone enrollment must be recorded and retained for a minimum of two years. All telemarketing calls that do not lead to a telephone enrollment, but last at least two minutes, shall be recorded and retained for a minimum of six months. The recordings shall be provided upon request to IPA staff, the Program Administrator, or a customer who has completed a telephone enrollment.

The Joint Solar Parties do not object to making calls available to the IPA or Program Administrator. However, providing calls to customers upon request may be difficult to execute when one is requested. This is for customer protection reasons, because it is necessary to verify the requestor's identity and the risk of fraud or misrepresentation of the requestor is high.

10. Direct mail
    a. Statements in direct mail material shall not claim that the Approved Vendor represents, is endorsed by, or is acting on behalf of, a utility or a utility program, a consumer group or program, or a governmental body or program (unless the Approved Vendor is a governmental body or consumer group).
11. Online marketing
    a. Each Approved Vendor offering community solar subscriptions~~,~~ to customers online shall clearly and conspicuously make available the ABP Informational Brochure. The Approved Vendor's marketing material shall not make any statements that it is a representative of, endorsed by, or acting on behalf of a utility or a utility program, a consumer group or a program run by a consumer group, a governmental body or a program run by a governmental body (unless the Approved Vendor is a governmental body or consumer group).
12. Conduct and training of agents, representatives, and contractors
    a. An Approved Vendor's agent or representative shall be knowledgeable of the requirements applicable to the marketing and sale of community solar subscriptionsto the applicable customer class.
    b. All Approved Vendor agents or representatives must be familiar with the subscriptions that they sell, including the rates, payment and billing options, the customers' right to cancel, and applicable termination fees, if any. In addition, the Approved Vendor's agents or representatives must have the ability to provide the customer with a toll-free number for billing questions, disputes and complaints, as well as the Program Administrator's toll-free phone number for complaints that are provided on the Program Brochure.
    c. Approved Vendor agents and representatives shall not utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting subscriptions or providing services. Should an Approved Vendor have any questions about whether a certain language or materials would be considered false, misleading, inaccurate, or deceptive, please submit that statement to the Program Administrator for review and the Program Administrator will respond within five business days. Account numbers can be collected incidental to collection of historical usage information.
    d. Account numbers or information obtained for this purpose shall not be used to solicit or offer any ARES supply service, unless the Approved Vendor or its agent is an ARES. If the customer does not sign a contract with the Approved Vendor or subcontractor, the Approved Vendor must delete all information related to and including that customer's account number unless the Approved Vendor or its agent is an ARES and the ARES has an independent right to possess the account number.

The Joint Solar Parties request clarification that Section 11.a. does not require Approved Vendors to

display the full brochure on their website and that displaying a clear link to the brochure on the IPA's website is sufficient. This will ensure that customers are being directed to a trusted source (the IPA's website) and there are fewer issues with posting of older versions.

To the extent that an Approved Vendor or its agent is an ARES, there is no reason the IPA should get in the way of the ARES jointly marketing ARES service and a subscription. Of course, the ARES would remain regulated by the Illinois Commerce Commission and subject to the Public Utilities Act, Part 412, and other requirements of law governing the ARES's solicitation of customers through employees or agents (including possession and retention of a potential or current customer's account number). As written, an ARES that is an Approved Vendor or an agent of an Approved Vendor must delete even a current supply customer's account number if that customer is solicited for a subscription and says no. This would be a nonsensical result—and one that would make satisfaction of the ARES's contractual requirements to that customer impossible.

e. All Approved Vendor agents or representatives engaged in any solicitation behavior connected to systems participating in the Adjustable Block Program shall complete a **training program** that covers the applicable Sections of these marketing behavior guidelines. The Approved Vendor shall document the training of its agents and representatives and provide a certification to the Program Administrator showing that an agent or representative completed the training program prior to an agent being eligible to market or sell community solar subscriptions under 25 kW to projects that will be part of the ABP. Upon request by the Program Administrator or the IPA, an Approved Vendor shall provide requested training materials and training records within seven business days.

Before the Joint Solar Parties can take a position on this requirement, the IPA must provide substantially more information about what type of training program it was envisioning. For instance, the Joint Solar Parties' position would be different if the IPA provided a few sheets of materials that must be read or a video that must be played than if the IPA created an elaborate testing system. The IPA should explain what it believes the content of a training program must be.

The Joint Solar Parties also request clarification on which "applicable Sections of these marketing behavior guidelines" the above language refers to.

f. The IPA and the Program Administrator reserve the right to produce standardized training materials and to require vendors to use those materials to supplement whatever other materials they may use.

g. When an Approved Vendor contracts with an independent contractor or subcontractor vendor to solicit customers on the Approved Vendor's behalf, the Approved Vendor shall confirm that the contractor or vendor has provided training in accordance with this Section.

h. Each Approved Vendor shall monitor marketing and sales activities to ensure that its agents are providing accurate and complete information and complying with all laws and regulations and~~,~~ ~~including~~ these marketing guidelines.

13. ~~Records retention~~

~~a. An Approved Vendor must retain each customer's subscription contract for six months longer than the duration of the subscription. Upon request by the IPA or Program Administrator, the Approved Vendor shall provide these records within twenty-one calendar days.~~

~~b. Upon the customer's request, the Approved Vendor shall provide the customer a copy of the fully executed contract via e-mail, U.S. mail or facsimile within twenty-one calendar days. The Approved~~

~~Vendor shall not charge a fee for the copies if a customer requests fewer than three copies in a 12-month period.~~

The Joint Solar Parties do not necessarily object to this requirement, and understand it is included in Part 412, but records retention does not fall within the boundaries of marketing guidelines. We suggest moving this to the Program Guidebook. Additionally, if an Approved Vendor sells or assigns contracts to another Approved Vendor it may not be permitted to retain a copy. We suggest striking these provisions from these guidelines or revising them to provide additional flexibility.

14. ~~Contract Renewal~~

~~a. Non-Automatic Renewal. The community solar provider shall clearly and conspicuously disclose any subscription renewal terms in its contracts, including any cancellation procedure. For contracts with an initial term of six months or more, the provider shall send a notice of contract expiration separate from the bill at least 30 but no more than 60 days prior to the date of contract expiration. A second notice may be sent within 30 days of contract expiration if there is no response to the first notice. Nothing in this Section shall preclude a provider from offering a new subscription agreement to the customer at any other time during the contract period. If the customer enters into that new contract prior to the end of the contract expiration notice period, the notice of contract expiration under this Section is not required. The separate written notice of contract expiration shall include:~~

~~i. A statement printed or visible from the outside of the envelope or in the subject line of the e-mail (if customer has agreed to receive official documents by e- mail) that states "Contract Expiration Notice";~~

~~ii. The date on which the existing contract will expire;~~

~~iii. A full description of the renewal offer, including the date service would begin under the new offer, if a renewal offer was provided. If the new contract's terms differ from the existing contract, the developer shall include a UDS that identifies the new terms, as well as a side-by-side comparison of the material changes between the existing contract and the new contract; and~~

~~iv. A statement, in at least 12-point font, that the customer must provide affirmative consent to accept the renewal offer.~~

~~b. Automatic renewal of community solar subscriptions is not permitted unless the contract is fixed price without escalators .~~

The marketing guidelines prohibit automatic renewal of a Subscription. The Joint Solar Parties oppose this for several reasons. First, there is no basis or precedent for prohibiting automatic renewal for larger non-residential customers. Second, there are adequate protections for "Small Subscriber" customer classes in the Automatic Contract Renewal Act, which could be supplemented similar to Part 412.

As an initial matter, while the IPA has stated that the marketing guidelines were based on Part 412, Part 412 itself expressly allows for automatic renewals. In addition to the requirements of the Illinois Automatic Contract Renewal Act, an ARES operating under Part 412 has to provide a side-by-side comparison of the material terms of the new contract compared to the existing contract no less than 30 but no greater than 60 days before the existing term expires. (83 Ill. Admin. Code § 412.240(b).) In addition, ARES must provide a second form of notification to the customer according to the customer's own preference for contact. (83 Ill. Admin. Code § 412.240(c).) The IPA has provided no reason to go beyond Part 412.

In addition, only one party in ICC Docket No. 15-0512, the proceeding to approve the now-in-effect Part 412, recommended prohibiting ARES from automatic renewals. That party withdrew its recommendation. The Commission nevertheless addressed the concern, finding that the protections in what eventually became 412.240(b) and (c) provided adequate protection. (*See* ICC Docket No. 15-0512, First Notice Order dated September 22, 2016 at 28 (noting withdrawal), 33 (Commission conclusions).)

As the IPA is aware, Part 412 applies only to residential customers and non-residential customers with annual consumption of under 15,000 kWh. The JSP is unaware of any setting in which larger (by electricity usage) non-residential customers have been precluded from agreeing to a contract with an automatic renewal. Larger non-residential customers are more likely to have in-depth review—including by counsel—and will be able to negotiate terms and conditions including automatic renewal. Larger non-residential customers are more likely to be able to monitor long-term commitments and not be surprised by automatic renewal.

For these reasons, the IPA should eliminate the prohibition on automatic contract renewal and make the requirements for automatic contract renewal no more restrictive than 83 Ill. Admin. Code §§ 412.240(b)-(c).

15. Customers not fluent in English
    a. If any sales solicitation, agreement, contract or verification is translated into another language and provided to a customer, all of the documents must be provided to the customer in that other language.
    b. When it would be apparent to a reasonable person that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the agent in English or when the customer or another person informs the agent of this circumstance, the Approved Vendor agent shall find another representative fluent in the customer's language, use an interpreter, or terminate the contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act must be completed.
    c. During a telephone solicitation, when it would be apparent to a reasonable person that a customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, or the customer or another person informs the agent of this circumstance, the agent must transfer the customer to a representative or interpreter who speaks the customer's language, if such a representative is available, or terminate the call.
16. Respecting a customer's request to not be contacted or to terminate contact
    a. An Approved Vendor's agent or representative making an in-person visit or solicitation shall immediately leave the premises at the customer's, owner's or occupant's first request.
    b. An Approved Vendor's agent or representative making a telephone call to a prospective customer shall terminate the phone call at the request of the prospective customer.
    c. An Approved Vendor's agent or representative shall not conduct any in-person solicitations at any building or premises where any sign, notice or declaration of any description whatsoever is posted that prohibits sales, marketing, or solicitations.
17. Identification of salespeople
    a. Approved Vendor agents or representatives who engage in in-person solicitation for community solar subscriptions under 25 kW shall display identification on an outer garment. This identification shall be visible at all times and prominently display the following:
        i. The Approved Vendor agent's ~~full~~ first name in a clear and reasonable size font;
        ii. An agent ID number;
        iii. A photograph of the Approved Vendor agent; and
        iv. The trade name and logo of the company the agent is representing.
    ~~b. If the identification only includes the required information listed above (agent's name, agent's ID number, agent's photo, and trade name and logo of the company the agent is representing), this identification is not required to be submitted to the Program Administrator for review as marketing materials. If the identification displayed by Approved Vendor agents includes additional information, that identification is subject to Program Administrator review to ensure that it does not conflict with the guidelines for marketing materials.~~
18. Terms of the underlying contract between a subscriber and an Approved Vendor or its subcontractor must

be consistent with terms of the required Standard Disclosure Form. Any statements made verbally must be consistent with the contract and the disclosure form. Per Section 7.6.2 of the IPA's Long-Term Renewable Resources Procurement Plan, all contracts with subscribers must contain the following provisions:

(a) A plain language disclosure of the subscription, including:

(i) The terms under which the pricing will be calculated over the life of the contract and a good faith estimate of the subscription price expressed as a monthly rate or on a per kilowatt-hour basis or a statement explaining how the rate will be calculated if it cannot be expressed as a rate per kilowatt-hour;

(ii) Whether any charges may increase during the course of service, and, if so, how much advance notice is provided to the subscriber.

The Joint Solar Parties have repeatedly noted that many valuable products cannot be expressed as a fixed rate per kilowatt-hour. The Joint Solar Parties note that there are too many variables to provide a good-faith estimate—especially if the developer does not have access to the customer's retail supply contract or the subscription is supposed to begin in a future delivery year where utility supply prices have not yet been released. These numbers would be material if the product provided a fixed percentage of savings or a fixed dollar amount. Instead, the Joint Solar Parties recommend that the IPA update its language from the LTRRPP quoted above to allow for description of products where the subscription price will be based on a formula (i.e. this disclosure should explain that formula).

(b) **Contract provisions regulating the disposition or transfer of a subscription**, as well as the costs or potential costs associated with such a disposition or transfer;

As noted in the Joint Solar Parties' comments on the Brochure, the subscription agreement should be able to have reasonable restrictions on transfer or disposition of a subscription. The Brochure should reflect the language in 18(b) for the reasons explained in the Joint Solar Parties' comments on that section.

(c) All nonrecurring (one-time) charges;

(d) All recurring (monthly, yearly) charges;

(e) A statement of contract duration, including the initial time period and any rollover provision;

(f) Terms and conditions for early termination, including:

(i) Any penalties that the Project Developer may charge to the subscriber; and

(ii) The process for unsubscribing and any associated costs.

(g) If a security deposit is required:

(i) The amount of the security deposit;

(ii) A description of when and under what circumstances the security deposit will be returned;

(iii) A description of how the security deposit may be used; and

(iv) A description of how the security deposit will be protected.

(h) A description of any fee or charge and the circumstances under which a customer may incur a fee or charge;

(i) A statement explaining any conditions under which the Project Developer may terminate the contract early, including:

(i) Circumstances under which early cancellation by the Project Developer may occur;

(ii) Manner in which the Project Developer shall notify the customer of the early cancellation of the contract;

(iii) Duration of the notice period before early cancellation; and

(iv) Remedies available to the customer if early cancellation occurs;

(j) A statement that the customer may terminate the contract early, including:

(i) Amount of any early cancellation fee;

(k) A statement describing contract renewal procedures, if any;

(l) A dispute procedure;

(m) The Agency's and Commission's phone number and Internet address;

(n) A billing procedure description;

(o) The data privacy policies of the Project Developer;

(p) A description of any compensation to be paid for underperformance;

(q) Evidence of insurance for the full replacement cost of the project;

(r) A description of the project's long-term maintenance plan. This shall consist of either a contract with a third party operations and maintenance company for the duration of the REC contract or an explanation of how the approved vendor or project owner will accomplish this maintenance themselves;

(s) Current production projections and a description of the methodology used to develop production projections;

(t) Contact information for the Project Developer for questions and complaints;

(u) A statement that the Project Developer does not make representations or warranties concerning the tax implications of any bill credits provided to the subscriber;

(v) The method of providing notice to the subscribers when the project is out of service for more than three business days, including notice of:

(i) The estimated duration of the outage; and

(ii) The estimated production that will be lost due to the outage.

(w) Any other terms and conditions of service.

Additionally, the contract shall disclose procedures for the subscriber to follow should the subscriber move to a different location within the same utility service territory, and procedures for the subscriber to follow should the subscriber wish to transfer its subscription to another person within the same utility service territory.

This language in bold font above seems to be duplicative of language in Section 18.b. above. We request clarification on how this is different.

In addition, the sections above are simply not material to customers of many community solar projects. For instance, the insurance policy will likely provide the customer with no actionable information. Also, if the IPA believes that a small subscriber is able to evaluate sufficiency of proof of insurance, the IPA should reevaluate its assessment of whether a customer needs to be sent the brochure twice. Similarly, it is not clear what actionable information a customer would receive from reviewing a lengthy contract between an owner/operator and one or more third-party maintenance provider(s). In addition, it will appear ironic to at least some customers to provide a privacy policy when every *potential* customer's name, address, phone number (possibly a cell phone), e-mail address, utility, and electric supplier must be disclosed to the government before the contract is even signed.

Ideally, the IPA would allow an Approved Vendor to put "not applicable" sections (q), (r), (s), and (v) if the customer does not own part of the project or the project's owner as part of the Subscription. In addition, to the extent that any of those sections are applicable as well as sections (n) and (o), the contract should be allowed to include a hyperlink to a document available on the Approved Vendor or system owner's website. This will substantially cut down on the length of the contract.

19. Consequences for violation of marketing guidelines

a. Approved Vendors may be barred from participating as Approved Vendors. Per Section

6.13.3 of the Long-Term Renewable Resources Procurement Plan, "Approved Vendors found by the Agency to have violated consumer protection standards may be subject, at minimum, to suspension or revocation of their Approved Vendor status by the Agency, and if in violation of local, state, or federal law, also potential civil or criminal penalties from other relevant authorities."

b. Approved Vendors may be subject to conditional approval and other forms of progressive discipline upon discovery of any problems related to consumer protection. Such forms of progressive discipline include temporary suspension from program participation, limitations on the extent of program participation, and a prohibition on the ability to serve as an Approved Vendor for customers below 25 kw in size.

20. **The ABP Program Administrator may follow up with customers to confirm that the customer received, understood, and signed the Standard Disclosure Form. If, after the Program Administrator's reasonable investigation and subject to affirmation by the IPA, a customer is found not to have received, understood, and signed the Standard Disclosure Form, the Approved Vendor may be subject to discipline for the violation of marketing guidelines.**

The Joint Solar Parties do not oppose the IPA or the Program Administrator confirming that the disclosure was signed by the customer or their authorized agent by requesting a sample of such documents, at least within the window that Approved Vendors must maintain these documents. However, especially given the challenges the Joint Solar Parties pointed out in comments on the Disclosure, the proposed design is inherently confusing and not conducive to customer understanding.

Beyond these issues, the Joint Solar Parties strongly oppose the IPA or its vendor attempting to subjectively determine whether an individual customer understood the Disclosure vis-à-vis the Approved Vendor. As the IPA proposed the Disclosure, it is highly prescriptive and thus the IPA's responsibility to make it understandable. While the Joint Solar Parties do not oppose the IPA expending its resources on surveys, focus groups, or other pathways to improving the clarity of the document, Approved Vendors should not have to defend a document they did not write.

However, even assuming that the IPA granted the Joint Solar Parties' recommendations to allow for additional Approved Vendor flexibility in drafting, the Joint Solar Parties remain uncomfortable with the IPA secret shopping an Approved Vendor's customers looking for evidence that a customer may not have understood some portion of the disclosure to the IPA's satisfaction. Once again, the IPA is not procuring subscription agreements, and not one dime of funds collected from all ratepayers pays for subscriptions. The IPA—not the Approved Vendor—has decided to so closely associate by required disclosures the relationship of the Adjustable Block program to the subscriptions.

21. The Program Administrator and/or the IPA may refer any instances of potentially misleading or deceptive marketing to the Office of the Illinois Attorney General, consumer protection groups, local authorities, and/or others.
22. As some marketing of community solar subscriptions may have occurred prior to the finalization of these guidelines, Approved Vendors and their agents and representatives shall update future versions of marketing materials and guidelines to conform to any changes. Any customer who has not already received a Brochure and Disclosure form should be sent a copy of those documents. ~~ensure that if any prior statements or representations are inconsistent with these guidelines, that they clearly update and correct those statements and representations with any entity that subsequently becomes a subscriber to their community solar project~~
23. ~~Contract Rescission~~
~~A small subscriber wishing to rescind the pending subscription agreement will not incur any early termination fees, and will receive a full refund of any upfront payment, if the customer contacts the community solar provider to rescind the pending agreement within 3 calendar days (or the next business day if the 3rd calendar day is not a business day) after signing the subscription agreement.~~

The Joint Solar Parties do not oppose a rescission period of three calendar days (or the next business day if

the third day is not a business day). However, as noted previously, the above language is related to contract terms and does not belong in marketing guidelines.