

FINAL DISTRIBUTED GENERATION CONTRACT REQUIREMENTS

January 23, 2019

Section 6.13 of the Long-Term Renewable Resources Procurement Plan (“the Plan”) states that, for distributed generation installations, the Illinois Power Agency (“Agency”) and its Program Administrator will develop “a list of contract requirements” to be provided to Approved Vendors for the system purchase contract, lease, or power purchase agreement (“PPA”) between the Approved Vendor (or its agent) and the customer. That section also notes that “[a]t a minimum, Approved Vendors may also use model leases and model financing instruments provided by the Solar Energy Industries Association (“SEIA”), or other contracts that meet requirements provided by the Agency.”

Similarly, as described in Section 6.13.1 of the Plan, the Illinois Commerce Commission’s Order approving the Plan requires that, for systems already energized at the time of finalizing consumer protection requirements, the following is required:¹

1. A signed contract amendment, that brings the contract or subscription agreement into full compliance with the minimum contract requirements from the Plan;
2. The disclosure form, signed by the customer post-contract execution; and
3. Proof that the brochure was provided to the customer.

Note that the Adjustable Block Program does NOT require the submission of a signed contract (or a contract amendment bringing a previously signed contract into compliance with the below requirements) for every system purchase, lease, or PPA, provided that all ABP requirements, such as demonstrating binding site control, are met through other means. As stated in the Plan, the Agency retains the right to request copies of installation contracts from Approved Vendors.

The Approved Vendor will attest to compliance with the contract requirements herein in Part II of the project application.

¹ For systems already energized at the time Distributed Generation consumer protection requirements were finalized on December 27, 2018, Approved Vendors will have the opportunity at the Part I application to either provide proof of provision of the Disclosure Form and Informational Brochure to the system host, or else attest that good-faith, diligent efforts to provide the Disclosure Form and Informational Brochure to the system host after that date were unsuccessful. For systems that already had executed installation contracts with the respective system host as of the date hereof, Approved Vendors will have an opportunity at the Part II application to attest that a contract amendment bringing the contract into full compliance with the requirements in this document was signed by the system host, or else attest that good-faith, diligent efforts to amend the existing contract with the system host after the date hereof were unsuccessful.

1. Common Contract Requirements for all business models

- Right of rescission within three or more calendar days (only for systems $\leq 25\text{kW}$)
- System design specification:
 - Site plan or equivalent drawing
 - Size of system
 - Estimated first year production and annual degradation
- If performance guarantee is provided:
 - Host or owner's remedy in case of underperformance
 - Host or owner's procedure to lodge a claim under the performance guarantee
- Change in pricing or other terms, if any, in the event of non-selection for an Adjustable Block Program REC contract. As an example, a condition precedent clause would satisfy this requirement.
- Responsibility for interconnection application
- If warranty is provided:
 - Term of warranty
 - Defects covered (e.g. faulty installation, malfunctioning components beyond manufacturer's warranty, roof damage)
 - Financial limits on warranty
 - Warranty provider
 - Host or owner's procedure to lodge a claim under warranty
- Allocation of maintenance obligations between host or owner & installer
- Allocation of responsibility for entering meter data (this provision could be in a separate contract)
- All possible fees (other than those mentioned in #2, #3, and #4 below)
- Events of default
 - Remedies of both host or owner & installer in case of default
- Dispute resolution procedures
- Governing law

2. Contract Requirements specific to Purchase Transactions

- Total price:
 - Down payment, if any
 - Schedule of subsequent payments
- Type of panels
- When title transfers to owner
- Provisions for owner's transfer of RECs to Approved Vendor (this provision could be in a separate contract)
- Owner's rights and obligations upon selling the property
- When mechanic's lien waiver(s) will be provided

3. Contract Requirements specific to PPA Transactions

- Frequency of periodic (e.g. monthly) payments
- Method of invoicing and payment

- Pricing terms (including escalation)
- Date of first payment
- Term of PPA arrangement
- Early termination fee, if any
- Whether system removal is (i) mandatory or (ii) at the host's election or (iii) not possible upon contract termination
 - System removal fee, if any
- Whether PPA offtaker has right to purchase the system
 - before end of lease term; or
 - upon end of lease term
 - In either case, economic terms for purchase
- PPA term renewal: automatic? At host's option? Not at all? What are the economic terms?
- System owner's right to file UCC-1 statement
- Allocation of responsibility to maintain insurance on system, and the required insurance terms
- Allocation of risk of loss in case of damage to system
- Host's rights and obligations upon selling the property
 - Requirements for transferring the PPA agreement to the new property owner

4. Contract Requirements specific to Lease Transactions

- Initial payment
- Frequency of periodic (e.g. monthly) payments
- Method of invoicing and payment
- Pricing over time (including escalations)
- Date of first payment
- Term of lease
- Early termination fee, if any
- Type of panels
- Whether system removal is (i) mandatory or (ii) at the host's election or (iii) not possible upon contract termination
 - System removal fee, if any
- Whether lessee has right to purchase the system
 - before end of lease term; or
 - upon end of lease term
 - In either case, economic terms for purchase
- Lease term renewal: automatic? At lessee's option? Not at all? What are the economic terms?
- Lessor's right to file UCC-1 statement
- Allocation of responsibility to maintain insurance on system, and the required insurance terms
- Allocation of risk of loss in case of damage to system
- Lessee's rights and obligations upon selling the property
 - Requirements for transferring the lease to the new property owner