

**ENERGY SERVICES AGREEMENT**

1.	<b>AGREEMENT AND EFFECTIVE DATE:</b>	Energy Services Agreement (“ <b>Agreement</b> ”) between the Customer and the Seller (listed below) dated as of _____, 2021 (“ <b>Effective Date</b> ”)
2.	<b>CUSTOMER:</b>	Burney Water District Notice Address: 20222 Hudson St, Burney, CA 96013  Customer Representative: _____ Telephone: _____ Email: _____
3.	<b>SELLER:</b>	[_____, LLC] c/o EDF Renewables Distributed Solutions, Inc., a Delaware corporation Notice Address: <u>5 Commerce Avenue, West Lebanon, NH 03784</u> Seller Representative: Michael Robinson Telephone: 858.521.3416 Email: <a href="mailto:michael.robinson@edf-re.com">michael.robinson@edf-re.com</a> Copy to: <a href="mailto:DS-Contract@edf-re.com">DS-Contract@edf-re.com</a>
4.	<b>SYSTEM; DIESEL GENERATOR:</b>	<ul style="list-style-type: none"> <li>a. A 549 kW DC/ 400 kW AC solar, photovoltaic, ground-mounted electricity generation system (the “<b>Solar Facility</b>”); and</li> <li>b. A 400 kW/ 2371 kWh lithium ion battery energy storage system (the “<b>BESS</b>”), until the BESS is removed pursuant to Agreement <b>§ 7.3.3</b>;</li> <li>c. Microgrid electrical infrastructure, including switch gear, metering, inverter, controls system, and related electrical and other system components (“<b>Microgrid Infrastructure</b>”).</li> </ul> <p>collectively referred to as the “<b>System</b>”. Details about the System and System installation are on <b>Exhibit A</b>. In addition, as part of installation of the System, Seller will procure, install, and interconnect a 600kW diesel generator (“the Diesel Generator”) on the Property.</p>
5.	<b>CUSTOMER PROPERTY; SITE:</b>	The System will be installed on the Customer’s “ <b>Property</b> ” at South Hudson Street, Burney, CA 96013, on the area of the Property designated by the Parties as the “ <b>Site</b> ,” all as shown on <b>Exhibit B</b> .
6.	<b>TERM:</b>	Effective Date through the 25th anniversary of Commercial Operation Date (“ <b>Initial Term</b> ”), subject to extension for successive terms of five (5) years each (each a “ <b>Additional Term</b> ”), as provided in Agreement.
7.	<b>ELECTRIC OUTPUT AND SERVICES; BATTERY SERVICE FEES:</b>	From COD through the last day of the Term and subject to early termination of BESS Services as provided herein, Seller will deploy the System to provide Electric Output and Services to the Customer. In consideration of Electric Output, Customer shall pay Seller the “ <b>Electricity Price</b> ” set forth on <b>Exhibit C</b> . In consideration of BESS Services, Customer shall pay Seller Battery Service Fees, as provided on <b>Exhibit D</b> .
8.	<b>ENVIRONMENTAL AND TAX BENEFITS:</b>	Seller will be entitled to all Environmental and Tax Benefits associated with the System, including any federal investment tax credit, and any SGIP Incentives.
9.	<b>DIESEL GENERATOR</b>	Seller will <b>procure and</b> install a 600 kW Diesel Generator. As of the Commercial Operation Date, Seller will transfer to Customer title to the Diesel Generator. From and after the date of such transfer, Customer shall be responsible for all operating and maintaining the Diesel Generator.
10.	<b>CRITICAL DATA:</b>	
A.	Current Rate Tariff; Required New Tariff (if applicable):	Current Rate: B-6 New Rate: B-19-NEM2
B.	Meter Number:	1009903798
C.	Account Number:	8783009132-5

**AGREEMENT SIGNATURE PAGE**

In furtherance of the development, construction, and operation of the System and the provision of Electric Output and BESS Services, and in consideration of the mutual covenants and other good and valuable consideration set forth in this Agreement, Customer and Seller agree to perform this “Agreement”, which includes the Cover Page, this Signature Page, the Terms and Conditions, the Schedule, and the Exhibits, in accordance with its terms.”

**INTENDING TO BE LEGALLY BOUND**, Seller and Customer have signed this Agreement through their duly authorized representatives effective as of the Effective Date by their respective signatures below.

**SELLER:**  
[ \_\_\_\_\_, LLC]

**CUSTOMER:**  
**BURNEY WATER DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **ENERGY SERVICES AGREEMENT**

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. TERMS AND CONDITIONS INTEGRATED; DEFINED TERMS**

§ 1.1 **Terms and Conditions.** These Energy Services Agreement Terms and Conditions hereby are incorporated into and made part of the Agreement.

§ 1.2 **Defined Terms.** Capitalized terms used in this Agreement are defined on **Schedule 1.1**.

#### **ARTICLE 2. PURCHASE AND SALE OF PRODUCTS; OPERATION OF THE SYSTEM**

§ 2.1 **Installation and Operation of the System.** Commencing on the Effective Date and continuing through the Commercial Operation Date, Seller, at Seller's sole cost (subject to Customer's obligations hereunder) shall design, engineer, procure, and install the System on the Site. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Initial Term and any Additional Term (as defined on the Cover Page, and collectively the "**Term**"), Seller, at Seller's sole cost (subject to Customer's obligations hereunder) shall operate, maintain, and remove the System on the Site, shall deliver to Customer all of the electric energy generated by the Solar Facility ("**Electric Output**"), and, subject to early termination of BESS Services as provided in § 7.3.3, Seller shall provide BESS Services. From the COD and throughout the Term, Seller shall, at its sole cost and expense operate and maintain the System in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and permits, Prudent Industry Practices, and the terms of this Agreement, and monitor the System's performance. Throughout the Term, Seller will have exclusive ownership and control of the System and all electricity transmitted to and including the Delivery Points.

§ 2.2 **Certification of the System.** Seller shall use best efforts to secure certification of the System Certification of the System as a renewable energy resource under applicable California Law or any other renewable energy standard or environmental compliance program for which the System may qualify in order that Seller may sell and transfer Environmental Attributes. Customer shall timely cooperate with Seller, at Seller's expense, to certify the System as a renewable energy resource under applicable California Law or any other renewable energy standard or environmental compliance program, Seller may register the System with RECSYS and be responsible for all costs associated with such registration. Seller may report the Electric Output of the System to RECSYS based on the readings of one or more meters installed as part of the System and located at each of the delivery point(s) identified on **Exhibit A** (each, a "**Delivery Point**") that shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility (each a "**System Meter**").

§ 2.3 **Network Resource.** During the Term of this Agreement, Seller, at its sole cost and expense, may seek designation of all or any portion of the System as a network resource or may request an alternate designation consistent with the Tariff. Seller, with the reasonable cooperation of Customer, will be solely responsible for all actions necessary to acquire the requested designation from the ISO. To the extent that Customer incurs any expense in pursuit of the requested designation, Seller will reimburse Customer for all reasonable costs that the Customer incurs in pursuing the requested designation. at any point, Seller requests that all or any portion of the System be designated as a Network Resource by the ISO, Seller shall become the Market Participant for the System (or shall arrange at its sole cost and expense for the services of a Market Participant) for the purposes of scheduling the Environmental Attributes and Capacity Attributes from the System with the ISO. Seller shall be responsible for the scheduling of the Environmental Attributes and Renewable Energy Credits and Capacity Attributes from the System during the Term for the System in compliance with ISO standards.

§ 2.4 **Purchase and Sale of Electric Output.** In consideration of the payment to Seller of the Electricity Price (defined below) as provided on **Exhibit C**, Customer shall purchase from Seller, and Seller shall sell to

Customer, 100% of the Electric Output of the Solar Facility. The Electric Output of the Solar Facility will be measured at the System Meter(s) at the Delivery Point(s). Customer shall take title to the Electric Output at the Delivery Point(s), and risk of loss will pass from Seller to Customer at the respective Delivery Points. After passing through the Delivery Point(s), Customer directs that 100% of the Electric Output generated by the Solar Facility will be delivered to the BESS, with any Electric Output in excess of that required to fully charge the BESS being delivered at the Delivery Point to the distribution grid. Any purchase, sale and/or delivery of Electric Output prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

**§ 2.5 Purchase and Provision Battery Services.** During the Term, commencing on the Commercial Operation Date and continuing throughout the remainder of the Initial Term and each Additional Term for which the “System” includes the BESS (such period, the “**BESS Term**”), Seller, at Seller’s sole cost (subject to Customer’s obligations hereunder) shall operate, maintain, and remove the BESS on the Site and provide related, ancillary services (collectively, the “**Battery Services**”), all as provided in this Agreement. In addition, for as long as the System includes the BESS, Seller may, in its sole discretion, operate the System on the Site to sell, provide, transfer, and deliver energy capacity, resource adequacy, and other resources, support, and utility services (generally and collectively, the “**Utility Services**” and, together with the Battery Services, the “**BESS Services**”) to the Utility, the ISO, or grid operators through wholesale ancillary service market transactions, including pursuant to one or more demand response programs; provided, that in no event shall the provision by Seller of the Utility Services materially interfere with Seller’s provision of the Battery Services. Seller will notify Customer if it elects to offer Utility Services. Customer hereby consents to the provision of Utility Services consistent with this Section and will execute and deliver any agreement or document required to reflect this provision. In consideration of the provisions of BESS Services, Customer shall pay Seller “**Battery Service Fees**” as provided on **Exhibit D**.

## **§ 2.6 Electric Output Guarantee and Storage Availability Guarantee**

**§ 2.6.1** Subject to § 2.6.2, for each Guarantee Year, Seller guarantees to Customer that the Actual Annual Electricity for such Guarantee Year will equal or exceed the Expected Annual Electricity for such Guarantee Year.

**§ 2.6.2** The existence of a Shortfall in any Guarantee Year shall not be a breach or default by Seller hereunder so long as, within sixty (60) days after the conclusion of the Guarantee Year in which a Shortfall occurs, Seller pays to Customer cash equal to the total Shortfall amount multiplied by the Electricity Price applicable during such Guarantee Year.

**§ 2.6.3** A “**Shortfall**” means any positive difference, expressed in kWh, between the Expected Annual Electricity for a Guarantee Year and the Actual Annual Electricity for such Guarantee Year.

**§ 2.6.4** A “**Guarantee Year**” means (a) the period of eighteen calendar months, commencing the sixth calendar month after the Commercial Operation Date and ending on the day before the second anniversary of the Commercial Operation Date; or (b) any period of twelve consecutive calendar months commencing on the second anniversary of the Commercial Operation Date and ending on the day prior to the subsequent anniversary of the Commercial Operation Date through the tenth (10<sup>th</sup>) anniversary of the Commercial Operation Date.

**§ 2.6.5** On or before the Commercial Operation Date, Seller will deliver to Customer a written calculation of the amount (the “**Expected Annual Electricity**”) equal to eighty percent (80%) of Electric Output that the Solar Facility is expected to produce during each Guarantee Year, as determined based on a weather-adjusted PVSyst energy model for the Solar Facility prepared by Seller, and which will reflect System equipment degradation over time, soiling losses, and other standard adjustments. Upon delivery to the Customer, the written calculation of the Expected Annual Electricity automatically will be appended to this Agreement as **Exhibit G**.

**§ 2.6.6** .The “**Actual Annual Electricity**” means: (a) all Electric Output delivered to the Delivery Point(s) during a Guarantee Year, determined based on System Meter data for such Guarantee Year; *minus* (b) all Electric Output that Seller reasonably can demonstrate would have been delivered to the Delivery Point(s) during such Guarantee Year, but for any of the following that occurs or continues during such Guarantee Year: (i) an Exclusion Event adversely and materially affecting the Solar Facility; (ii) Solar Facility downtime for reasonable

maintenance, (iii) damage to the Solar Facility not caused by Seller or its agents, (iv) periods during which Solar Facility solar modules are completely or substantially covered with dust, ash, or dirt, other than due to Seller's failure to wash the modules at reasonable intervals during the Guarantee Year, or (v) unusually long periods of cloud cover (outside of standard weather patterns for the Site); *plus* (c) the positive difference, if any, between the Actual Annual Electricity for the prior Guarantee Year and the Expected Annual Electricity for the prior Guarantee Year.

**§ 2.6.7 BESS Availability.** During the Term, for each Guarantee Year through the fifth (5<sup>th</sup>) Guarantee Year, subject to the provisions of **§ 2.6.8**, the BESS shall not be more than **ten percent (10%) "Unavailable"** (as defined in this Section). Whether or not the BESS is Unavailable shall be calculated at the inverter level of the BESS, where Unavailable is defined in accordance with ANSI/IEEE 762-1987 Standard Definition for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity, Section 4.1.2, which provides: "Equipment is in an Unavailable state when the equipment is not capable of operation because of operational or equipment failures, external restrictions, testing, work being performed, or some adverse condition. The unavailable state persists until the unit is made available for operation by being synchronized to the system in service state." For any Guarantee Year where the BESS is more than ten percent (10%) Unavailable, other than Excused Unavailability as outlined in **§ 2.6.8**, Customer shall be entitled to an Availability Credit as set forth on **Exhibit D**.

**§ 2.6.8 Excused Unavailability.** Notwithstanding the definition of "Unavailable" pursuant to **§ 2.6.7**, the BESS shall not be deemed Unavailable in any Billing Period for purposes of **§ 2.6.7** if the BESS is not operating due to any of the following in such Billing Period:

- i) a Force Majeure Event affecting the BESS or portions of the BESS.
- ii) curtailment of the BESS or parts of the BESS, or any failure or outage of the Utility's distribution or transmission system caused by an event that is external to the BESS and beyond the reasonable control of Developer;
- iii) a directive by Customer, the Utility, or transmission provider, applicable Laws, or any Governmental Authority requiring Seller to shut down or otherwise cease (whether temporarily or otherwise) the operations of the BESS or portions of the BESS;
- iv) events which result in a manufacturer warranty claim, from the time the applicable BESS equipment is adversely affected through to the time at which affected equipment is replaced and returned to operation;
- v) interruption of BESS operations agreed upon in writing between Customer and Seller in advance of any outage occurring that may be necessary for Developer to perform the Services in accordance with this Agreement;
- vi) interruption of BESS operations solely due to the extent of Customer's failure to comply with any of its obligations under this Agreement;
- vii) interruption of BESS operations due to any significant unsafe conditions as determined by Seller and Customer, in accordance with Prudent Industry Practice and the Site safety rules and procedures, which unsafe conditions are not the fault of Seller or the result of any failure of Seller to perform Services hereunder;
- viii) a material change in SGIP program requirements for BESS operation;
- ix) BESS downtime resulting from tests or inspections requested by the Customer, the reason for such tests or inspections is not the fault of the Seller or the result of any failure of the Seller to perform its Services hereunder;
- x) failure of the Customer to make electricity available to the BESS;
- xi) a Customer Event of Default; or
- xii) BESS downtime (that is not the fault of the Seller or the result of any failure of the Seller to perform its Services hereunder) due to the existence of conditions that are outside of the BESS's programmed safe operating limits.

### **ARTICLE 3. CONSIDERATION; SYSTEM OPERATIONS**

#### **§ 3.1 Consideration.**

§ 3.1.1 *Electricity Price*. From and after the Commercial Operation Date, in consideration of the delivery of Electric Output from the System and the installation and transfer of the Diesel Generator, Customer shall pay Seller monthly for the Electric Output delivered to the Delivery Points, at the \$/kWh rate shown in **Exhibit C** (the “**Electricity Price**”). The monthly payment for Electric Output will be equal to the applicable \$/kWh rate multiplied by the number of kWh of Electric Output generated during the applicable month, as measured by the System Meters. Seller shall invoice Customer monthly for Electric Output, either manually or through ACH. Such monthly invoices shall state (i) the amount of Electric Output produced by the System and delivered to the Delivery Points, (ii) the Electricity Price payable by Customer under this Agreement for such Electric Output, as provided on **Exhibit C**, (iii) applicable taxes and charges payable by Customer for the month as provided in this Agreement, and (iv) the total amount due from Customer for Electric Output.

§ 3.1.2 *Battery Service Fees*. As further described on **Exhibit D**, as consideration for the BESS Services provided by Seller, for each monthly Utility billing period (a “**Billing Period**”) from and after the Commercial Operation Date during the BESS Term, Customer shall pay to Seller the “**Battery Service Fee**” pursuant to the invoicing and payment procedures set forth on **Exhibit D**. With each invoice, Seller shall provide to Customer data (including graphs) that quantitatively illustrate the operation of the BESS and related provision of BESS Services during the applicable Billing Period.

§ 3.1.3 *System Attributes*. Subject to § 3.2, Seller shall be entitled to receive the SGIP Deposit and all System Attributes, including SGIP Incentives, with respect to the System, consistent with **Exhibit C** and **Exhibit D**.

§ 3.1.4 *Environmental and Tax Benefits*. In addition to SGIP Incentives, Seller shall be entitled to all Environmental and Tax Benefits with respect to the System.

§ 3.1.5 *Termination Charges*. Upon termination of this Agreement, Customer may be required to pay a Termination Charge in accordance with **Exhibit C**, **Exhibit D**.

§ 3.2 **BESS - SGIP Deposit**. If, prior to the Effective Date, Customer paid the SGIP Program Administrator the SGIP application fee (“**SGIP Deposit**”) in connection with the SGIP application for the System submitted by or for Seller prior to the Effective Date, then, within 15 days after execution and delivery of this Agreement by the Parties, Seller will reimburse and pay an amount equal to the SGIP Deposit to Customer, on condition that to the extent the SGIP Deposit is refunded to Customer, Customer immediately shall tender and pay to Seller the SGIP Deposit. During the Term, neither Customer nor Seller shall knowingly and adversely affect or cancel System participation in, or qualification under, SGIP. Further, Customer shall not re-assign or transfer to any third party the System qualification under SGIP or any SGIP Incentives. However, termination of this Agreement or removal of the BESS a part of the System, each as expressly permitted by this Agreement, shall not be prohibited by this provision, even if termination or removal would have an impact on BESS or System participation in SGIP.

§ 3.3 **Governmental Charges**. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. Customer shall either pay or reimburse Seller for any and all Governmental Charges assessed on the production, generation, sale, delivery or consumption of all Products produced by the System or the interconnection of the System to the Utility’s electric distribution system, including property taxes on the System; provided, however, Customer will not be required to pay or reimburse Seller for any Governmental Charges during periods when Seller fails to operate the System to deliver Electric Output and BESS Services to Customer for reasons other than Force Majeure or as a result of Customer’s acts or omissions. In the event provision of Electric Output or any of the BESS Services provided hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party’s request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion. Seller is responsible for local, state and federal income taxes attributable to Seller for income received under this Agreement. Customer is responsible for all Governmental Charges attributable to the provision of the Electric Output or BESS Services from Seller to Customer customarily charged by the electric Utility serving Customer or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of the Electric Output or BESS Services to Customer.

§ 3.4 **Utility Rates/Tariffs; System Charging**. Customer acknowledges and agrees that the economics

of the Battery Services may be adversely affected by the applicable rates and/or tariffs charged for electricity to Customer by the Utility. In conjunction with the purchase of energy from the Utility, Customer agrees that it is responsible for the applicable rates and/or tariffs charged to it by the Utility for any such energy purchased, and that any loss relating to the failure to obtain or continue service under a preferential tariff rate shall be borne solely by the Customer.

**§ 3.5 Service Warranty.** For the period commencing the Commercial Operation Date and ending on the date this Agreement is terminated, Seller will maintain and operate the System, including System support, System problem diagnosis, on-Site repair, and preventative maintenance as required to enable the delivery of Electric Output and BESS Services pursuant to the requirements of this Agreement (the “**Service Warranty**”). The Service Warranty shall not apply to the BESS from and after the date the BESS is removed as part of the System pursuant to **§ 7.3.3**. Except as provided in this Section, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Customer’s sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

**§ 3.6 Curtailment.** Customer may curtail, shut down, or otherwise interfere with the delivery of the Electric Output by the Solar Facility or BESS Services by the BESS (each a “**Customer Curtailment**”) without the prior written consent of Seller to support Customer’s day to day operations, and, for each Customer Curtailment, Customer will take commercially reasonable steps to minimize any disruption to the delivery of Electric Output and BESS Services. A Customer Event of Default shall occur: (a) upon a Customer Curtailment that causes or results in the loss of the SGIP Incentive or the SGIP Deposit; or (b) upon Customer’s failure to timely pay Battery Service Fees.

**§ 3.7 Emergencies; Malfunctions.** Each Party shall notify the other (i) immediately upon becoming aware of any emergency condition with respect to the System or the Site that could reasonably be expected to pose an imminent threat to the safety of persons or property and (ii) within twenty-four (24) hours after becoming aware of any other malfunction of the System or interruption in the supply of electricity from the System. Each Party shall designate personnel to be notified in the event of such an emergency or interruption and shall advise the other Party of such personnel and any changes in such personnel. To the extent the conditions that caused the emergency or interruption are attributable to the System, Seller shall correct, or cause to be corrected, such conditions as soon as reasonably possible in light of the circumstances following the giving of notice to Seller by Customer or upon otherwise becoming aware of such emergency or interruption; *provided, however*, that Seller may invoice Customer on a time and materials basis for any such corrective action required due to any act or omission of Customer that is not in accordance with this Agreement.

**§ 3.8 System Maintenance; BESS Repowering or Replacement.** Customer acknowledges and agrees that some maintenance work may require Seller to power down or shut off the System, including disconnecting the BESS to repower or replace all or part of the BESS, and the Parties agree to cooperate and use good faith efforts to minimize the impact of any such interruption on Customer’s business and operations. For the purpose of maintaining and repairing the System, including disconnecting the BESS to repower or replace the BESS, Seller may reasonably suspend delivery of Electric Output and/or BESS Services, and such suspension will not constitute a breach of this Agreement.

**§ 3.9 Destruction of System.** If the System is substantially damaged or destroyed, other than due to an Event of Default by Seller, Seller will have the right, exercisable upon written notice to Customer, to terminate this Agreement or to repair and restore the System and receive from Customer the proceeds of any insurance maintained by Customer that cover the loss relating to such damage or destruction of the System. If Seller elects to repair and restore the System, the Parties will work in good faith to promptly agree on a scope of work and schedule for repair and restoration work, a possible extension of the Initial Term, and provision of Electric Output

and BESS Services. All obligations of Seller to provide Electric Output and BESS Services will be suspended from the date of substantial damage or destruction of the System that is not caused by Seller through termination of this Agreement or, as applicable, restoration and repair of the System.

#### **ARTICLE 4. SYSTEM DESIGN, APPROVALS, AND INSTALLATION**

**§ 4.1 Installation of System.** Seller, at Seller's cost (subject to Customer's obligations hereunder) will furnish, undertake, procure, and provide or cause to be performed, furnished, undertaken, procured and provided, all materials and work for the design, engineering, procurement, construction, installation, interconnection, testing, start-up and commissioning of the System and the Diesel Generator at the Site, diligently and in a good and workmanlike manner and in accordance with this Agreement, including the Scope of Work attached as **Exhibit A**, the System Plans approved by Customer, and in accordance with all applicable Laws and Prudent Industry Practices. Customer shall provide to Seller all information reasonably requested by Seller to safely, efficiently, and effectively install the System and the Diesel Generator and to operate the System (*e.g.*, Property-specific electrical plan drawings and schedule of operations).

**§ 4.2 Unforeseen Site Conditions.** Customer will be responsible for any work, and all related costs arising due to unforeseen conditions at the Property or Customer-caused matters, including: (i) unforeseen site conditions (*e.g.* – hazardous or archeological materials at the Site); (ii) changes to the Scope of Work directed by Customer; and (iii) corrections of pre-existing code violations at the Property. Seller may require Customer to perform and pay for such additional work or Seller may perform such additional work and charge the Customer therefor. Seller shall provide documentation of charges invoiced by Seller under this Section; and Customer shall all undisputed portions of any invoiced charges under this Section within 15 days after invoice delivery to Customer.

**§ 4.3 Approvals.** Seller will apply for, pay application and related fees, unless otherwise provided on **Exhibit C**, for, and will use reasonable efforts to secure with respect to the installation of the System and the Diesel Generator and the operation of the System all required Approvals, including: (i) all required approvals and permits from Governmental Authorities; and (ii) approval from the Utility. Customer will reasonably and without delay assist Seller in obtaining any Approval. Upon delivery of a termination notice to the Customer, Seller shall have the right to terminate this Agreement without further liability if any Approval reasonably cannot be secured on a timely basis. Seller's obligations to secure any Approvals, install the System, or begin provision of BESS Services shall be contingent upon Seller's receipt of the Confirmed Incentive Reservation Date, though Seller is not required to reach such milestone before commencing any of the foregoing activities.

**§ 4.4 Design; Plans.** Seller will submit to the Customer a draft of the schedule and plans for the installation of the System and the Diesel Generator, including construction drawings, one-line diagram, and Equipment specifications (the "**System Plans**"). Customer will have seven (7) calendar days after submission to review, comment on, or approve the draft System Plans. The Parties will endeavor in good faith to integrate the reasonable comments of Customer into the System Plans and to agree on final System Plans within 20 days after the initial submission of draft System Plans to the Customer. The on-site installation work by Seller will not begin until the date the System Plans are finally agreed by the Parties. If the System Plans cannot be mutually agreed and finalized on a timely basis, Seller may terminate this Agreement without further liability to Customer upon delivery of a written termination notice to Customer.

**§ 4.5 Site; Hazardous Materials.** The Parties acknowledge that the System's battery cells are classified as Hazardous Materials under applicable Environmental Laws, including Title 49 of the United States Code of Federal Regulations; and Seller's use and deployment thereof shall be in compliance with such Title 49 at all times.

**§ 4.6 Title and Risk of Loss.** The System will be and remain the sole property of Seller and Customer will have no ownership or other interest in the System (other than pursuant to exercise by Customer of any buy-out right). Notwithstanding that the System or portions thereof may be attached to the Property, the System is and will remain personal property of the Seller and shall not be or be deemed fixtures. Subject to Customer's



obligations under this Agreement, Seller will bear all risk of loss or damage to the System. From and after the Commercial Operation Date, the Diesel Generator shall be owned by and operated and maintained by the Customer.

**§ 4.7 Liens.** Seller will not grant or suffer to exist any liens on or security interests in the Property; however, Seller is not prohibited from granting liens, encumbrances, or security interests on or in the System.

**§ 4.8 Subcontracting.** Seller may subcontract Seller's obligations under this Agreement to any Affiliate or third party; provided, that Seller shall at all times remain responsible for the performance of Seller's obligations under this Agreement and for its subcontractors' compliance with the terms of this Agreement.

**§ 4.9 Conditions Precedent.** The rights and obligations of the Seller under this Agreement are conditioned upon the satisfaction in full, or waiver by Seller, of the following conditions prior to Commercial Operation:

**§ 4.9.1** Customer shall have complied with Customer's obligations under **§ 5.1**;

**§ 4.9.2** Seller shall have obtained or caused others to have obtained, and Customer shall have provided commercially reasonable cooperation in connection with obtaining, all Approvals required for the construction, and installation of the System and the Diesel Generator at the Property and for the operation of the System;

**§ 4.9.3** Seller shall have entered into and/or submitted to Customer for execution all contracts and delivered all other documents required by the Utility in connection with this Agreement, including an interconnection agreement, and the transactions contemplated hereby (collectively, "**Utility Documents**") to the reasonable satisfaction of Seller, or the Utility shall have waived the requirement for such Utility Documents;

**§ 4.9.4** Seller shall have completed a physical inspection of the Property including, if applicable, geotechnical work, real estate due diligence, and a structural engineering report that verifies the load bearing capacity of the location for the System and the Diesel Generator, to confirm the suitability of the Site for the System;

**§ 4.9.5** Seller shall have control over the Site, whether by purchase, lease, or license, and shall have and control all real property rights with respect to the Site necessary to construct and install the System and the Diesel Generator, and to own and operate the System at the Site on the Property, including, without limitation, ingress and egress rights, utility interconnection rights, insolation rights, stormwater rights, right-of-way and curb-cut rights, and construction laydown rights;

**§ 4.9.6** Seller shall have secured approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System and the Diesel Generator by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

**§ 4.9.7** Seller shall have received confirmation that the System will qualify for all Environmental Attributes that reasonably should be available to the System or its owner, and that Seller will obtain all applicable Environmental and Tax Benefits with respect to the System;

**§ 4.9.8** Seller has secured, received confirmation that the System will be afforded, tax exemptions and beneficial tax treatment that reasonably should be available to the Seller or for the System, including assessments at a level that excludes the value of tax credit Environmental and Tax Benefits.

If any of the foregoing requirements have not been satisfied prior to Commercial Operation, Seller shall have the right to terminate this Agreement without penalty or any liability to Customer, effective upon written termination notice to Customer detailing the unsatisfied condition or conditions.

**§ 4.10 Notice of Commercial Operation Date.** Subject to the remaining provisions of this Agreement, Seller shall notify Customer in writing of the Commercial Operation Date.

## **ARTICLE 5. CUSTOMER OBLIGATIONS.**

**§ 5.1 Customer Deliverables.** Prior to or as soon as possible after the Effective Date, Customer shall have delivered to Seller:

§ 5.1.1 electricity usage data and electric utility bills for the Customer at the Property for the immediately preceding twelve (12) months;

§ 5.1.2 executed authorization(s) allowing Seller to access all new electric utility bills, account information, and usage data for the Customer's usage at the Property for the duration of the Term (updates may be required throughout the Term);

§ 5.1.3 the Financial Statements of Customer; and

§ 5.1.4 any easements, leases, consents and approvals, in form and substance satisfactory to Seller, that may be required in Seller's discretion, by or from any third party holding an interest in the Property, which, in each case, are necessary to build, finance, own, operate and maintain the System.

## § 5.2 Site Matters.

§ 5.2.1 *Site Lease and Access Rights.* From the Effective Date, throughout the Term, and through the last day of any removal period under § 7.4.1, in consideration for the covenants, agreements and conditions herein to be observed by Seller, Customer does demise and lease to Seller the Site, as set out in **Exhibit B**, for the exclusive use of Seller and agrees to provide all other easements, real property or access rights required from time to time by Seller for access, ingress and egress to and from the Site over the Property for the purposes of installing, operating, maintaining, repairing, replacing, modifying, or decommissioning the System and performing its obligations hereunder, including any interconnection rights. Seller and persons acting by or through Seller may access the Site and the Property: (i) at any time during the Term, upon three (3) calendar days' prior notice from Seller to Customer; (ii) from the date Seller mobilizes at the Site to commence construction through the COD and any removal period during business hours (7am-7pm Mon through Fri), and (iii) in the event there is a failure of the System, an imminent risk to safety or destruction of property, immediately without notice if such notice is not reasonably feasible. Customer shall make available to Seller a mutually satisfactory lay-down and staging area at the Property for the installation and removal of the System. Customer will be responsible for any delays or any damages as a result of Customer's failure to provide, secure, or maintain access to, and use of, the Property and the Site as provided in this Agreement. If Customer does not own the Site, at the request of Seller, Customer shall provide access permissions from the Site owner consistent with this Agreement.

§ 5.2.2 *Site Maintenance.* Customer shall maintain the area surrounding the System in a clean and safe condition free of any obstructions or hazards that may endanger the System or otherwise impede Seller's ability to access the System, as necessary to perform its obligations or exercise its rights under this Agreement.

§ 5.2.3 *Use and Occupancy of the Site by Customer.* Throughout the Term, Customer will occupy and use the Property substantially in the same manner as Customer is using and occupying the Property as of the Effective Date. During the Term, Customer shall not transfer, lease, assign, demise, or convey any right, title, or interest of Customer in or to the Property or the Site. To the extent, Customer occupies or uses the Property pursuant to a lease or easement (each a "**Customer Site Agreement**"), during the Term hereof, Customer shall perform Customer's obligations under, and shall not default under or breach such Customer Site Agreement. Further, Customer shall renew or extend any Customer Site Agreement so that the Customer Site Agreement does not expire or terminate prior to the last day of the Term. ]

§ 5.3 Security. Throughout the Term, Customer shall provide security for the System at the same level it provides for its own personal property of similar value at the Site.

§ 5.4 Notice. Customer shall notify Seller immediately of any issues or potential issues affecting the System of which Customer becomes aware, including any evidence of malfunction or potential threat to the System or safety or property.

§ 5.5 System. During the Term, Customer shall not, directly or indirectly, modify, repair, move or otherwise tamper with the System in any manner without Seller's prior written consent; provided, however, that the foregoing shall not preclude Customer from taking all reasonable action necessary in response to emergency or safety issues at the Site.

§ 5.6 Liens. Customer will not grant or suffer any other person to grant, and hereby expressly waives, all existing and future statutory, common law, and other liens or encumbrances on the System. To the extent that any

such lien or encumbrance arises and cannot be waived under applicable Law, Customer hereby subordinates any such lien in favor of Customer to all existing and future liens and security interests in favor of the lenders and financing parties of Seller, and Customer will cooperate with Seller to obtain non-disturbance and subordination agreements, or such other necessary agreements, from any person with an encumbrance or any other mortgage, deed of trust, lease or other lien to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights of Seller in and to the System.

**§ 5.7 Damage to Deliverables.** If Customer, its contractors or agents damage the Diesel Generator (prior to the Commercial Operation Date) or the System (at any time), the Customer shall be liable to Seller for all required repairs, including all costs in connection with diagnosing the issue; and the obligation of Seller to provide Electric Output or Battery Services shall be suspended until such damage is repaired and the System is restored. Any amounts payable by Customer pursuant to this Section shall be due within thirty (30) days of Customer's receipt of an invoice therefor from Seller.

**§ 5.8 Customer Obligations to Enable Electric Output Delivery and Maintain Battery Services.** To enable the delivery of Electric Output, Customer shall not install or permit the installation of any improvement, including the planting of any vegetation, on or near the Site that could impair the access of the Solar Facility to sunlight. To facilitate provision of Electric Output and Battery Services, during the Term Customer shall act in good faith and provide commercially reasonable cooperation to Seller.

## **ARTICLE 6. PROPRIETARY RIGHTS; LICENSE.**

**§ 6.1 License to; Ownership of Proprietary Rights.** Seller hereby grants to Customer a limited, non-exclusive license under Seller's Proprietary Rights, including the System Plans, solely in connection with Customer's receipt of Products from deployment of the System. Subject to the preceding sentence, all Proprietary Rights shall at all times remain the sole and exclusive property of Seller. Customer acknowledges that it may learn certain information with respect to the Proprietary Rights and agrees that such information shall be deemed Seller's confidential information and Customer's use thereof shall be in accordance with **§ 14.4**.

## **ARTICLE 7. TERM; TERMINATION; DEFAULT; PURCHASE OPTION; SURVIVAL.**

**§ 7.1 Term.** The "Term" under this Agreement is the period commencing on the Effective Date and ending on the last day of the Initial Term or of any Additional Term, in each case, subject to early termination as expressly provided in this Agreement. At least 180 days prior to the last day of the Initial Term or the last day of the first Additional Term, as applicable, Seller may elect to extend the Term for an Additional Term by delivering a written extension notice to Customer. .

**§ 7.2 Termination upon Default.** Either Party may terminate this Agreement, or suspend its performance hereunder, upon the occurrence of any of the following (each, an "**Event of Default**") by or with respect to the other Party (the "**Defaulting Party**"):

**§ 7.2.1** The Defaulting Party commits a material breach of this Agreement (excluding breaches described in **§ 7.2.2**), unless such breach is cured within thirty (30) days following notice thereof;

**§ 7.2.2** The Defaulting Party commits a material breach of this Agreement as to the other Party's Confidential Information or Proprietary Rights, unless such breach is cured within fifteen (15) days following notice thereof.

**§ 7.2.3** The Defaulting Party becomes insolvent or the subject of any proceedings under any bankruptcy, insolvency or liquidation Laws, which proceedings are not resolved favorably to the Defaulting Party or dismissed within sixty (60) days, makes a general assignment for the benefit of creditors, ceases conducting business in the normal course, or has a material portion of its assets relating to or serviced by the System attached.

**§ 7.2.4** Any event expressly identified by this Agreement as an "Event of Default."

### **§ 7.3 Other Termination Rights.**

**§ 7.3.1 *By Seller.*** Seller will have the right to suspend or terminate this Agreement upon one or more of the following material events that occur and are in effect during the Term of this Agreement: (a) issuance of a court or administrative order has the effect of subjecting the provision and/or sale of any Product to federal or state regulation of prices and/or service, (b) failure of any condition set forth in **§ 4.9**, other than through the negligent or willful acts or failures of Seller, (c) any Environmental Attributes or Environmental and Tax Benefits, including SGIP Incentives, providing value to Seller with respect to the System, including any impacts to Seller's ability to provide Battery Services, are materially diminished or eliminated, due to a Change of Law or other change or circumstance, other than due to the negligent or willful acts or failures of Seller; (d) any Exclusion Event occurs, other than an Exclusion Event defined on **Schedule 1.1, Section 27(e)** through **Section 27(g)**; (e) a Force Majeure Event occurs; or (e) if a supplier of the System (e.g., pv module manufacturer, inverter manufacturer, battery manufacturer, or Charging Station) becomes bankrupt or insolvent, fails to fulfill its warranty obligations with respect to the System, or fails to provide System spare parts replacements, or supplies to service the System, other than as a result of the negligent or willful acts or failures of Seller.

**§ 7.3.2 *Prior to Commencement of Installation Work.*** This Agreement may be terminated prior to commencement of the installation of the System without further liability of the Parties, including without any obligation of the Customer to pay a Termination Charge, if: (a) Customer is unable to obtain written authorization (in form reasonably satisfactory to Seller) from any owner, lessor, tenant, mortgagee, or other party with an interest in the System Site or the Property; or (b) the Parties reasonably determine that the System Site conditions are not optimal for installation of the System and there is no replacement site at the Property. If Customer is the terminating Party under this Section, Customer must provide Seller with written notice of termination no later than the sixty (60) calendar days after the Effective Date, and, in any event, thirty (30) days before Seller commences installation of the System. Any termination notice provided by Customer under this Section after such deadline will be ineffective under this Section.

**§ 7.3.3 *Termination of BESS Services; Removal of BESS.*** At any time from and after the Commercial Operation Date, upon at least thirty (30) days' written notice to Customer, Seller may terminate the delivery of BESS Services. As of the effective date of the termination of BESS Services, the "System," as defined in this Agreement, no longer will include the BESS. No later than ninety days after the effective date of termination of BESS Services, the Seller shall remove the BESS from the Site and shall restore the portion of the Site occupied by the BESS to the condition existing as of the Effective Date, reasonable wear and tear excepted.

**§ 7.3.4 *As Otherwise Provided in this Agreement.*** This Agreement may be terminated by either Party in accordance with the express provisions of this Agreement.

### **§ 7.4 Effects of Termination or Expiration.**

**§ 7.4.1** Upon expiration or termination of this Agreement for any reason, other than purchase of the System by Customer pursuant to **ARTICLE 12**, Seller shall remove and transport the System, and any Seller personal property from the Property and restore the above-ground Site to its original condition (normal wear and tear excepted) in accordance with a schedule to be mutually agreed between the Parties (but in no event more than one hundred and twenty (120) days following such expiration or termination). Except in the event this Agreement is terminated by Seller pursuant to § 7.2, Seller shall be solely liable for all costs and expenses in connection with the foregoing.

**§ 7.4.2** Within thirty (30) days following the expiration or termination of this Agreement, Customer shall pay to Seller all outstanding amounts owed to Seller under this Agreement, including any Termination Charge.

**§ 7.5 No Prejudice.** Termination of this Agreement pursuant to its terms, in whole or in part for any reason, shall not affect any liabilities or obligations of either Party arising before such termination or out of events causing such termination, or any damages or other remedies to which a Party may be entitled under this Agreement, at Law or in equity.

**§ 7.6 Survival.** The provisions of this Agreement which, by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the termination or expiration of this Agreement

shall survive and continue to bind the Parties, including § 4.6, § 4.7, § 5.6, § 5.7, ARTICLE 6, § 7.4.2, § 7.5, ARTICLE 9, and ARTICLE 12.

## **ARTICLE 8. INSURANCE**

**§ 8.1 Insurance Requirements of Seller.** Seller shall maintain, at its sole cost and expense, the insurance coverage required to be maintained by Seller in accordance with **Exhibit F**.

**§ 8.2 Insurance Requirements of Customer.** Customer shall maintain, at its sole cost and expense, the insurance coverage required to be maintained by Customer in accordance with **Exhibit F**.

## **ARTICLE 9. INDEMNIFICATION; LIMITATIONS OF LIABILITY.**

**§ 9.1 By Seller.** Seller shall defend, indemnify, and hold harmless Customer, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any third-party claim, suit, action or proceeding (each, a “**Claim**”) that, if true, would establish:

**§ 9.1.1** bodily injury (including death) or damage to real or tangible personal property caused by the willful, fraudulent or grossly negligent acts of Seller;

**§ 9.1.2** a Seller Event of Default;

**§ 9.1.3** that the System, as installed and maintained by or on behalf of Seller, infringes, misappropriates or otherwise violates any third party’s Proprietary Rights.

**§ 9.2 By Customer.** Customer shall defend, indemnify and hold harmless Seller, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any Claim that, if true, would establish:

**§ 9.2.1** bodily injury (including death) or damage to real or tangible personal property caused by the willful, fraudulent or grossly negligent acts of Customer;

**§ 9.2.2** the SGIP Deposit is forfeited due to the negligent or willful acts or failures of Customer;

**§ 9.2.3** a Customer Event of Default.

**§ 9.3 Indemnification Procedures.** The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Claim and cooperate with the indemnifying Party at the indemnifying Party’s sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the indemnifying Party’s sole cost and expense. The indemnified Party’s failure to perform any obligations under this **§ 9.3** shall not relieve the indemnifying Party of its obligations under this Article, except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense. If Customer owes Seller indemnification pursuant to **§ 9.2.2**, without limiting any other remedy of Seller, Customer will pay the value of the SGIP Deposit to Seller within 15 days after forfeiture of the SGIP Deposit due to Customer’s fault.

**§ 9.4 Disclaimer of Certain Damages.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN **§ 3.5**, **§ 9.6** OR ON **EXHIBIT C** OR **EXHIBIT D**, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**§ 9.5 Monetary Cap.** EXCEPT FOR DIRECT PAYMENT OBLIGATIONS SPECIFIED IN THIS AGREEMENT AND EXCEPT AS OTHERWISE PROVIDED IN **§ 9.6**, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY FOR MONETARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED [TBD].

**§ 9.6 Exclusions.** THE LIMITATIONS OF LIABILITY SET FORTH IN **§ 9.4** AND **§ 9.5** SHALL NOT APPLY TO DAMAGES ARISING FROM, RELATED TO OR BASED ON: (A) THE ALLEGEDLY LIABLE PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR VIOLATION OF THE OTHER PARTY'S PROPRIETARY RIGHTS; OR (B) THE ALLEGEDLY LIABLE PARTY'S FAILURE TO PAY ANY AMOUNTS, INCLUDING ANY TERMINATION CHARGE; OR (C) THE FRAUD OF A PARTY.

## **ARTICLE 10. DISPUTES; GOVERNING LAW; VENUE.**

**§ 10.1 Dispute Resolution Procedure.** Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (or the breach or validity hereof) (each, a "**Dispute**"), shall be resolved in the manner described in this **ARTICLE 10**.

### **§ 10.2 Escalation of Disputes.**

**§ 10.2.1** All Disputes shall be initially referred to the appropriate manager/supervisory level personnel for resolution. If such personnel are unable to resolve such Dispute within ten (10) days after referral or such longer period as the Parties agree, then either Party may request in writing that the Dispute be escalated.

**§ 10.2.2** Promptly after receipt of written notice of escalation by either Party under **§ 10.2.1**, the Parties shall submit the Dispute to the appropriate senior management of the Parties for resolution. If senior management is unable to resolve the Dispute within five (5) business days from the date such Dispute was submitted for consideration or such longer period as the Parties may agree, then either Party may initiate legal proceeding in a court of competent jurisdiction located in the State of California, consistent with **§ 10.4**.

**§ 10.3 Injunctive Relief.** Each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), and by doing so will not be deemed to have breached its agreement to resolve Disputes under this **ARTICLE 10**.

**§ 10.4 Governing Law; Venue.** This Agreement will be governed by and interpreted in accordance with the Laws of the State of California, without regard to any conflicts of laws principles. In any action arising from this Agreement, venue shall be in the Superior Court of California in San Diego County, California. The Parties, to the extent they may legally do so, waive any right each may have to assert the doctrine of *forum non conveniens* or to object to venue to the extent any proceeding is brought in accordance with this section.

## **ARTICLE 11. REPRESENTATIONS; WARRANTIES**

**§ 11.1 Mutual.** Each Party represents, warrants and covenants to the other Party that: (a) it is a legal entity, duly organized, validly existing, and in good standing; and (b) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite action, and (iii) will not violate any agreement, lease, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

**§ 11.2 By Customer.** Customer further represents, warrants and covenants to Seller that (a) it is the sole and exclusive owner of the Property or has otherwise obtained all rights and authorizations necessary to permit Seller to install and operate the System at the System Site and provide the Battery Services at the Property during the Term (including after the Term with respect to removal of the System) and shall, upon Seller's request, provide copies of any documents evidencing such rights and authorizations; and (b) the System Site is free of any

Hazardous Materials as of the Effective Date, and Customer will not introduce any Hazardous Materials to the System Site at any time during the Term.

**§ 11.3 By Seller.** Seller represents, warrants, and covenants to Customer that Seller will perform the obligations of Seller under this Agreement to procure, install, and operate the System and to provide Electric Output and Battery Services in a workmanlike manner consistent with Prudent Industry Practices, this Agreement, and applicable Law. In addition, for 12 years from and after the COD or, if shorter, for the Term, Seller shall use reasonable efforts in good faith to operate and maintain the System in good condition, reasonable wear and tear excepted, subject to Customer's compliance with Customer's obligations under this Agreement and the fulfillment of third-party manufacturer warranties with respect to the System. Subject to the limitations in **ARTICLE 9**, in response to any Claim for breach of Seller's warranty under this Section made during the Term, as Customer's sole remedy, Seller will provide diagnostic, repair, and replacement services to address the warranty issue.

**§ 11.4 Limitations.** THE WARRANTIES OF EACH PARTY UNDER THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE.

## **ARTICLE 12. BUY-OUT RIGHT.**

**§ 12.1 Ownership of System.** . Throughout the Term (except as otherwise permitted in **ARTICLE 13**), Seller shall be the legal and beneficial owner of the System at all times, and all Environmental Attributes (unless otherwise expressly specified herein), Environmental and Tax Benefits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to the Site or the Property. Each of the Seller and Customer agree that the Seller (or the designated assignee of Seller permitted under **ARTICLE 13**) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Through the Commercial Operation Date, Seller shall own and control the Diesel Generator. As of the Commercial Operation Date, so long as Customer is not in default or breach of this Agreement, Seller shall transfer title and risk of loss in and to the Diesel Generator to Customer.

**§ 12.2 Option to Purchase.** At the end of Initial Term and each Additional Term, so long as Customer is not in default under this Agreement, Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of (a) the buy-out price as of the applicable buy-out date set forth on **Exhibit [ ]**; and (b) the Fair Market Value of the System. Customer must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Customer any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.

**§ 12.3 Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate reasonably agreed by Customer and Seller as of the date of determination of net present value, which shall take into account the Customer's cost of capital and the Seller's internal rate of return on the System, as of the determination date) of all associated future income streams expected to be received by Seller arising from the operation of the System for

the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, and Environmental and Tax Benefits, and factoring in future costs and expenses associated with the System avoided. Seller shall determine Fair Market Value within thirty (30) days after Customer has exercised its option to Purchase the System. Seller shall give written notice to Customer of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Customer reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Customer will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

### **ARTICLE 13. ASSIGNMENT AND FINANCING**

**§ 13.1 Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Customer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an Affiliate of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Customer's rights and obligations under this Agreement. Customer's consent to any other assignment shall not be unreasonably withheld if Customer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar and related battery energy storage systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Any attempted assignment in violation of the foregoing shall be null and void.

**§ 13.2 Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Party**" means any person providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to **§ 13.1(i) through (iv)**, Customer agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

**§ 13.3 Successor Servicing.** The Parties further acknowledge that in connection with any construction or long-term financing or other credit support provided to Seller or its Affiliates by Financing Parties, that such Financing Parties may require that Seller or its Affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Customer agrees to accept performance from any



Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

## **ARTICLE 14. MISCELLANEOUS**

**§ 14.1 Entire Agreement.** The Agreement, which incorporates and includes the Cover Page, the Signature Page, these Terms and Conditions, the Schedule, and the Exhibits, constitutes the entire agreement between Seller and Customer with respect to the subject matter hereof, superseding any prior agreement or representation, oral, electronic, or written.

**§ 14.2 Amendment; Modification; Waiver.** This Agreement may not be amended, except in a writing signed by duly authorized representatives of both Parties. No waiver of any breach or provision of this Agreement will be binding unless it is in a writing signed by a duly authorized representative of the waiving Party. The waiver, or failure to enforce, any right resulting from any breach or provision of this Agreement will not be deemed a waiver of any right relating to a subsequent breach, any other provision, or any other right hereunder.

**§ 14.3 Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of the Agreement will continue in full force and effect.

### **§ 14.4 Confidentiality.**

**§ 14.4.1** Each Party shall keep confidential and shall not use, make available or disclose any Confidential Information of the other Party. Notwithstanding the foregoing, Confidential Information may be disclosed on an as needed basis to Affiliates, personnel, subcontractors and/or agents of the receiving Party as required for the purpose of fulfilling the receiving Party's obligations under this Agreement, including as required to provide or receive any Products. Each Party shall ensure that any Confidential Information it discloses in accordance with this Section is treated as confidential by the person or entity to whom it is disclosed and shall require such person or entity to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Information than those imposed upon under this Agreement.

**§ 14.4.2** The provisions of this **§ 14.4** shall not apply to any Confidential Information which: (i) is or becomes commonly known within the public domain other than by breach of this Agreement or any other agreement that the disclosing Party has with any party; (ii) is obtained from a third party who is lawfully authorized to disclose such information free from any obligation of confidentiality; (iii) is independently developed without reference to any Confidential Information; or (iv) is known to the receiving Party without any obligation of confidentiality prior to its receipt from the disclosing Party.

**§ 14.4.3** Nothing in this **§ 14.4** shall prevent either Party from disclosing Confidential Information where it is required to be disclosed by Law (including without limitation the California Public Records Act, California Government Code section 6250 and following), or judicial, administrative, governmental or regulatory orders; provided, however, that each Party shall, if legally permitted, give the other Party prior notice, as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or to take measures to protect the confidentiality of the disclosure.

**§ 14.4.4** The receiving Party shall immediately inform the disclosing Party in the event that it becomes aware of the possession, use or knowledge of any Confidential Information of the disclosing Party by any person or entity not authorized to possess, use or have knowledge of such Confidential Information and shall, at the request of the disclosing Party, provide such reasonable assistance as is required by the disclosing Party to mitigate any damage caused thereby.

**§ 14.5 Publicity.** Notwithstanding anything in this Agreement, including **§ 14.4**, to the contrary, each Party shall be permitted to refer to the other Party by name with respect to the System or the Products in any marketing literature, web sites, articles, press releases or any other document or communication published in electronic or paper form by or for such Party; and (b) the Party that uses such references for marketing purposes shall provide to the other Party a copy of all marketing materials that include such references or a link to the web site

or web page that includes such references. Following such notice or provision of electronic link, if either Party objects to any particular use of its trademarks or names by the other Party, the other Party shall immediately modify or cease the use as reasonably requested by the objecting Party.

**§ 14.6 Independent Contractors.** The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture or other relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other Party's behalf.

**§ 14.7 Force Majeure.** If either Party is prevented from performing one or more of its non-monetary obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall promptly notify the other Party in writing specifying in reasonable detail the nature of the Force Majeure Event and its expected duration. The affected Party shall use commercially reasonable efforts to avoid or overcome the Force Majeure Event with the least possible delay. The obligations of the affected Party shall be reduced or suspended during the continuance of the Force Majeure Event; provided, that such obligations shall be reduced only to the extent that the adverse effects of the Force Majeure Event cannot be mitigated by the affected Party's diligent efforts. If a Force Majeure Event is anticipated to prevent a Party from performing its obligations under this Agreement for a period of three (3) months or more, the Parties shall meet to determine the appropriate course of action.

**§ 14.8 Notices.** Any notices allowed or required under the Agreement must be in writing addressed to each Party's principal place of business as set forth on the Cover Page and will be effective on the date of receipt if the date of receipt is a business day or on the next business day if the receipt date is not a business day.

**§ 14.9 Further Assurances.** Each Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to secure all necessary Approvals in a timely manner and to otherwise carry out the terms of this Agreement.

**§ 14.10 Public Project.** The agreements of the Parties are based on the understanding that neither the bidding requirements of the California Contract Code nor the prevailing wage requirements of the California Labor Code (collectively, the "**California Public Contract Regulations**") apply to the development and installation of the System or the provision of Products. Notwithstanding the foregoing, to the extent the California Public Contract Regulations are applicable to this Agreement, Seller shall comply with the same in connection with the installation of the System and the provision of Products on condition that the amounts payable to Seller for the Products (including any Termination Charge) are equitably increased to reflect the additional costs associated with compliance with California Public Contract Regulations.

**§ 14.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which will be considered one and the same instrument.

*[Remainder of Page Left Intentionally Blank]*

## SCHEDULE 1.1 DEFINITIONS

For purposes of the foregoing Agreement, unless the context requires otherwise, the following capitalized terms have the meanings assigned to them on this **Schedule 1.1**.

1. “**Actual Annual Electricity**” has the meaning set forth in **§ 2.6.6**.
2. “**Additional Term**” has the meaning set forth on the Cover Page.
3. “**Affiliate**” means an entity which controls, is controlled by or is under common control with a Party. As used herein, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
4. “**Agreement**” has the meaning set forth on the Cover Page.
5. “**Approvals**” means all approvals, consents, permits, licenses and certificates, including all corresponding inspections and authorizations, required by any utility, grid service provider or Governmental Authority in connection with the installation or operation of the System or the provision of Products hereunder.
6. “**Availability Credit**” has the meaning set forth on **Exhibit D**.
7. “**Battery Services**” has the meaning set forth in **§ 2.5**.
8. “**BESS Term**” has the meaning set forth in **§ 2.5**.
9. “**Billing Period**” has the meaning set forth in **§ 3.1.1**.
10. “**Capacity Attributes**” means any defined characteristic, certificate, tag, credit or accounting construct associated with the amount the capacity of the System that can be purchased or sold pursuant to the \_\_\_\_\_ *[TARIFF]*.
11. “**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable Law, including any regulation or incentive program promulgated or administered by any Governmental Authority and applicable to the System or any Product; (ii) the imposition of any material conditions on the issuance or renewal of any Approval after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Approval at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, including the Tariff, or (iv) revocation of any Environmental and Tax Benefit, which establishes requirements or revokes beneficial laws or rules affecting owning, supplying, constructing, installing, operating, or maintaining the System, or other performance of the Seller’s obligations hereunder or which has a material adverse effect on the cost to Seller of performing such obligations.
12. “**Claim**” has the meaning set forth in **§ 9.1**.
13. “**Commercial Operation Date**” or “**COD**” means the earliest date that the System is

completely installed, interconnected, permitted, and operational, and has received written permission to operate from the Utility, if required.

14. “Confidential Information” means information disclosed by a Party to the other Party under this Agreement, subject to the exceptions in § 14.4, and may include, but is not limited to, Trade Secrets or physical samples, financial, business, sales or technical information, terms of agreements, negotiations or proposals, and such other information disclosed (a) in written or other tangible form and marked “Confidential” or with words of similar import, (b) orally or visually and identified as Trade Secret, confidential or proprietary information at the time of disclosure, or (c) under circumstances by which the receiving Party should reasonably understand such information is to be treated as confidential, whether or not marked “Confidential” or otherwise. For clarity, “Confidential Information” includes any Trade Secret information relating to the System.

15. “Confirmed Incentive Reservation Date” means the date Seller receives written confirmation from the SGIP Program Administrator that the SGIP Incentives are approved and reserved.

16. “Contract Year” means each consecutive 12-month period commencing on the Commercial Operation Date.

17. “Customer” has the meaning set forth on the Cover Page.

18. “Customer Curtailment” has the meaning set forth in § 3.6.

19. “Defaulting Party” has the meaning set forth in § 7.2.

20. “Diesel Generator” has the meaning set forth on the Cover Page and is as described on the Scope of Work.

21. “Dispute” has the meaning set forth in § 10.1.

22. “Effective Date” has the meaning set forth on the Cover Page.

23. “Electric Output” has the meaning set forth in § 2.1.

24. “Environmental and Tax Benefits” means any and all (i) any investment tax credits attributable to any component of the System, the Electric Output, or the BESS Services, (ii) production tax credits attributable to any component of the System, the Electric Output, or the BESS Services, (iii) accelerated depreciation attributable to any component of the System, the Electric Output, or the BESS Services, (iv) direct third-party (including utility) rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, (vii) Low Carbon Fuel Standard Credits (LCFS), and (viii) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to any component of the System, the Electric Output, or the Services, irrespective of whether such Environmental and Tax Benefits accrue for the benefit of Seller, any Affiliate or any investor of Seller or its Affiliate. Without limitation, the Environmental and Tax Benefits include SGIP Incentives.

25. “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever titled, attributable to System, the generation of electrical energy from

the System, and its displacement of conventional Energy generation. Environmental Attributes include (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Seller, any Affiliate, or any investor of Seller to any Affiliate; and (4) Capacity Attributes. Environmental Attributes do not include Environmental and Tax Benefits.

26. "Environmental Laws" means all federal, state and local laws, statutes, ordinances and regulations (including the United States Code of Federal Regulations), now or hereafter in effect, in each case as amended or supplemented from time to time, relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

27. "Event of Default" has the meaning set forth in § 7.2.

28. "Exclusion Event" means any one of the following, subject to the last sentence of this definition:

(a) the BESS is not operating and/or the Battery Services cannot be provided, as the result of an act, omission, or Event of Default of the Customer which materially impairs the performance of BESS or provision of Battery Services, including the ability to safely store and discharge energy from, and/or monitor and control, the BESS;

(b) the Solar Facility is not operating and/or the Electric Output cannot be provided, as the result of an act, omission, or Event of Default of the Customer which materially impairs the performance of the Solar Facility or provision of Electric Output to the Delivery Point;

(c) a breach, default, or Event of Default by Customer with respect to Customer's ownership or occupancy of the Property, a sale of the Property, or a foreclosure or similar lender remedy against the Property prevents Seller from operating the System or providing the Electric Output or Battery Services, including, without limitation, preventing Seller (or any of Seller's subcontractors) from accessing the Site;

(d) any Customer Curtailment;

(e) a Force Majeure Event occurs that has the effect of preventing or materially inhibiting Seller from operating the System or providing the Electric Output or Battery Services, or that results in a reduction in the installed capacity of the Solar Facility or the BESS;

(f) Undue delay beyond the reasonable control of Seller by any utility, governmental authority, or SGIP administrator that, in any such case has a material and adverse impact on the ability of the Seller to deliver Products or otherwise comply with Seller's obligations under this Agreement ; or

(g) A change of law, rule, or regulation is implemented after the Effective Date that adversely affects the ability of Seller to operate the System, deliver Electric Output, or provide Battery Services, and, despite the commercially reasonable efforts of the Parties, the adverse impact of such change in law, rule, or regulation cannot be eliminated within a reasonable period (not to exceed 90 days

after the effective date of such change);

Customer may, prior to the occurrence of an Exclusion Event, obtain Seller's written consent to an event that would otherwise qualify as an Exclusion Event, in which case said event will not be an "Exclusion Event" under this Agreement; provided, however, that Seller may condition Seller's consent on relief from any adverse economic or other impact on Seller due to such event.

29. "Expected Annual Electricity" has the meaning set forth in § 2.6.5.

30. "Financing Statements" means with respect to a Party, such Party's most recently available unaudited balance sheet and statement of income and cash flows as of a previous fiscal quarter and such Party's most recently available audited statement of income and of cash flows, each prepared in conformity with generally accepted accounting principles (GAAP) in the United States of America.

31. "Force Majeure Event" means any act, event or condition beyond a Party's reasonable control, including acts of God, fire, explosion, accident, floods, earthquakes, embargoes, undue delay by any utility, governmental authority, or SGIP administrator, epidemics, war, terrorism, nuclear disasters or other similar events.

32. "Governmental Authority" means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any person, owned, operated, managed or otherwise controlled thereby.

33. "Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Services or this Agreement.

34. "Guarantee Year" has the meaning set forth in § 2.6.4.

35. "Hazardous Materials" means: (i) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws; (ii) petroleum and petroleum products; (iii) asbestos and materials containing asbestos; (iv) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (v) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation.

36. "ISO" means the [California] Independent System Operator, or its successor in interest.

37. "Law" means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement, the System, the Site, or the transaction contemplated hereby

38. "Losses" means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder.

39. “Proprietary Rights” means patents, trademarks, copyrights, Trade Secrets and any other intellectual or proprietary rights in and to the Software.

40. “Prudent Industry Practices” means those reasonable practices, methods and acts, as they may change from time to time, that (a) are commonly used to own, manage, operate and maintain energy storage facilities and associated facilities of the type that are similar to the System, safely, reliably and efficiently and in compliance with applicable Laws and manufacturers’ warranties and recommendations and (b) are consistent with the exercise of the reasonable judgment, skill, diligence, foresight and care expected of an energy storage facility operator in order to efficiently accomplish the desired result consistent with safety standards and Laws, in each case taking into account the location of the System, including climatic, environmental and general conditions. Prudent Industry Practices are not intended to be limited to the optimum practices or methods to the exclusion of others, but rather those practices or methods generally accepted or approved by a significant portion of the energy storage industry during the relevant time period.

41. “RECSYS” means the California Renewable Energy Certification System and any successor organization.

42. “Reporting Rights” means the right of Seller to report to any Governmental Authority, utility or other party, including under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the Environmental Attributes and the Environmental and Tax Benefits associated with the System or the BESS Services.

43. “Scope of Work” means the scope of System development and installation work to be performed by Seller hereunder as described in Exhibit A hereto.

44. “Seller” has the meaning set forth on the Cover Page.

45. “Seller Percentage” has the meaning set forth on Exhibit D.

46. “Service Warranty” has the meaning set forth in § 3.5.

47. “SGIP” means the State of California Self-Generation Incentive Program, as provided in Section 397.6 of the California Public Utilities Code.

48. “SGIP Deposit” has the meaning set forth in § 3.2.

49. “SGIP Incentives” means all financial incentives paid out under the SGIP in connection with the installation and operation of the System at the Property; and the Parties’ expectations with respect to the amount and timing of payment for the SGIP Incentives are set forth on Exhibit C.

50. “SGIP Program Administrator” means Pacific Gas and Electric

51. “Shortfall” has the meaning set forth in § 2.6.3.

52. “Software” means all software provided by Seller, or its Affiliates, contractors, or suppliers for operation of the System, including but not limited to metering, communications, battery management system, energy management system, and any Customer interface with the System.

53. “Solar Facility” has the meaning set forth on the Cover Page.
54. “System” has the meaning set forth on the Cover Page and includes all alterations, modifications, or improvements thereto, and is subject to any removal of the BESS therefrom pursuant to § 7.3.3.
55. “System Attribute” means any Environmental Attributes, Environmental and Tax Benefits, and Reporting Rights, including, without limitation, the SGIP Incentives.
56. “System Site” means the location of the System at the Property, as further described in **Exhibit B** hereto.
57. “Tariff” means the B-6 tariff and B-19-NEM2 issued by Pacific Gas and Electric, as amended from time to time.
58. “Term” has the meaning set forth on the Cover Page.
59. “Termination Charge” means the “Solar Termination Charge” set forth on **Exhibit C**, plus the “BESS Termination Charge” set forth on **Exhibit D**.
60. “Trade Secret” has the meaning set forth in California Civil Code section 3426.1(d).
61. “Unavailable” has the meaning set forth in **§ 2.6.7**.
62. “Utility” means the local electricity provider or utility serving the System Site. As of the Effective Date, the Utility is Pacific Gas and Electric
63. “Utility Documents” has the meaning set forth in **§ 4.9.3**.
64. “Utility Service” has the meaning set forth in **§ 2.5**.



**EXHIBIT A**

**SYSTEM DESCRIPTION: DIESEL GENERATOR DESCRIPTION: AND SCOPE OF WORK**

Except as noted in the table below or otherwise in this Scope of Work, Seller shall perform all work necessary for the design, engineering, development, permitting, material and equipment procurement, installation, construction, testing, commissioning, and start-up of the System (collectively, the “Project”):

<b>SUMMARY SYSTEM DESCRIPTION</b>			
<b>ID#</b>	<b>Sub-System</b>	<b>Description</b>	<b>Responsible Party</b>
2	Ground Mount PV System	Engineer, procure, construct, install, and commission a 459kWDC, 400 kWAC (approximate) ground-mounted PV System	Seller
3	Battery Storage System	Engineer, procure, construct, install, and commission a 400kWAC, 2371 kWh Battery Storage System	Seller
4	Control System	Procure, install, and commission Energy Management System (vendor and specifications are TBD) for new rooftop PV system, Carport PV System, and Battery Storage System.	Seller
5	Generator	Engineer, procure, construct, install, and commission a 600 kW diesel generator	Seller

Diesel Generator Description: **[TBD]**

**SCOPE OF WORK**

**General Inclusions:**

- A. Contractor will provide turn-key installation services for a complete, fully commissioned, and operational system(s) per the System specifications above.
- B. Contractor will perform System start-up and provide commissioning documentation for the Generator, Ground Mount and the Battery Storage system, and Generator system (each a “Subsystem”).
- C. Contractor will coordinate interconnection application process and all applicable inspections or requisite activities for final interconnection.
- D. All work shall be completed in a workmanlike manner, in conformity with the requirements of the Lease, and comply with all CC&R’s, Property Rules, and Legal Requirements, including permitting standards.
- E. Provide progress updates, revised schedules, and relevant communication throughout the performance of the Project.
- F. Provide proper removal, disposal, recycling, and associated coordination of all equipment, materials, appurtenances, etc. to be removed, replaced, or decommissioned.

Disposal and recycling documentation shall be provided by Contractor to Owner, upon request.

- G. Observe and strictly adhere to all Owner and CalOSHA required safety plans, procedures, and requirements. Furthermore, Contractor acknowledges that it shall notify and cause all of Contractor's employees and subcontractors to access and review such handbooks and to agree to the terms thereof, as amended from time to time, before making initial entry on to the Premises.
- H. Properly secure work areas with temporary fencing, scaffolding, shoring, trench covers, and other required security measures to ensure a safe work place for employees and subcontractors throughout the performance of the Project.
- I. Provide applicable Material Safety Data Sheets, upon request.
- J. Structural Engineering and Electrical Engineering Design as necessary including, if applicable, for submission to the Division of the State Architect (DSA).
- K. Engineers of Record will be licensed in the state of California.
- L. Owner agrees to provide a Letter of Authority (LOA) for Contractor to contact the Utility for the purposes of KYZ Monitoring Installation and System Interconnection.
- M. All Permitting documentation necessary for submission and permit issuance from DSA.
- N. Copper wire/cable will be used all conductors.
- O. All Interconnection coordination with the local Utility.
- P. All installation coordination with Owner's project management and Contractor subcontractors.
- Q. Interconnection shutdowns if required will be performed outside of normal business hours.
- R. A person responsible for the Premises will be present to shut down the power or the Owner will provide a letter indemnifying the Contractor for any damages that directly result from the Contractor shutting off the power.
- S. Conduit shall be PVC schedule 40 below grade,
- T. See **Exhibit B** and preliminary System Plans for preliminary Premises layout and System location information.
- U. Delivery and Unloading of the equipment at the Project site.
- V. Temporary fencing to "safe off" the work area as required for the Project construction period.
- W. Temporary restrooms within the temporary fencing for Contractor's use.
- X. Permit Fees
- Y. Utility Standard interconnection fee for a simplified Interconnection.
- Z. Final System Plans (as-builts) will be provided in PDF format.
- AA. Permanent Fencing around Ground Mounded Solar Field, Storage, and Generator facilities
- BB. Assumed 2000 PSI soil bearing pressure
- CC. Buss modifications to existing distribution Transformer switchboard

**3. Exclusions:**

- A. 3<sup>rd</sup> Party Owner Inspection Costs are the responsibility of the Owner
- B. Project designs will be based upon accurate Premises documentation provided by Owner to the extent available.
- C. Any work, including costs incurred for work, due to changes to the System location depicted in **Exhibit B** directed by Owner are not included.

- D. Owner will bring current electrical equipment at the Premises up to code.
- E. Temporary Power during shut down if necessary
- F. Tree Clearing in the Solar Array and to the South West of the Solar Array

Seller's subcontractor will provide onsite management and report to the Seller's Project Manager.

- Seller will provide turn-key installation services for a complete, fully commissioned, and operational system(s) per the System specifications above.
- Seller will perform system start-up and provide commissioning documentation.
- Seller will coordinate application process of rebates and incentives through Utility Provider(s) and applicable measurement & verification activities.
- Seller will coordinate interconnection application process and all applicable inspections or requisite activities for final interconnection.

**EXHIBIT B**

**SYSTEM SITE**

**Property Address and Property Information:**

Property Address: South Hudson Street, Burney, CA 96013,

**System Site:**

The proposed "System Site" within the Property where the System will be installed is denoted in the diagram below.



**EXHIBIT C**

**COMPENSATION – SOLAR FACILITY**

As consideration for the provision of Products and Seller’s other obligations under the Agreement, Seller shall be entitled to and shall be paid the consideration set forth in this **Exhibit C**.

1. **ELECTRICITY PRICE**. For each Contract Year, the Electricity Price is as set forth below:

<b><u>Contract Year</u></b>	<b><u>Price for Electric Output</u></b> <b><u>\$/kWh</u></b>
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$
15	\$
16	\$
17	\$
18	\$
19	\$
20	\$
21	\$
22	\$
23	\$
24	\$
25	\$

2. **INCENTIVES**. Notwithstanding the System’s presence on the Property, in consideration of the provision of Products and Seller’s other obligations under the Agreement, Seller shall own, and may assign or sell in its sole discretion, all right, title and interest associated with or resulting from the development, installation and ownership of the System or the provision of the BESS Services including all System Attributes and all Environmental and Tax Benefits, in each case that currently exist or as may become available due to any change in Law. At Seller’s request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Seller’s right, title and interest in and to the System Attributes. Customer shall not take any action or suffer any omission at the Property that would have the effect of impairing the value to the Seller of the System

Attributes. If any Environmental and Tax Benefits are paid directly to Customer, Customer shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Customer, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Customer's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Customer's timely publication. Seller and Customer shall file tax returns and other tax-related information and documents consistent with this **Section 2**

3. **TERMINATION CHARGE – PV SYSTEM.**

a. The "**Termination Charge**" is an amount equal to the sum of (1) reasonable compensation, on a net after tax basis for the loss or recapture of all Environmental and Tax Benefits, including the investment tax credit equal to thirty percent (30%) of the System value and MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (Seller shall furnish Customer with a detailed calculation of such recapture and loss amounts if such a claim is made), (2) the net present value, determined as of the termination date using a discount rate of 7% (or, as elected by Seller and if lower, the prevailing market discount rate at the time of calculation), of all unpaid amounts due and payable under the Agreement for Electric Output projected from the termination date through the end of the then-current Initial Term or Additional Term, as applicable, (3) the costs to remove the Solar Facility from the Property; (4) costs associated with early termination of any lease or other contract to which Seller is a party with respect to the installation or operation of the Solar Facility, and (5) any and all other amounts previously accrued under this Agreement and then owed by Customer to Seller for Electric Output or otherwise with respect to the Solar Facility.

b. Seller will calculate any Termination Charge and provide the calculation and any back-up to Customer on or before the Agreement termination date. Any Dispute as to the amount of the Termination Charge will be resolved pursuant to the Dispute resolution provisions of the Agreement; provided, however, that, on the termination date or, if later, 15 days after the date Seller delivers the Termination Charge calculation to Customer, Customer will pay Seller all undisputed portions of the Termination Charge and 50% of the disputed portion of the Termination Charge.

4. **PAYMENT OF TERMINATION CHARGE.** Except as provided in subclause (a) or (b) below, as of the effective date of termination of this Agreement, Customer shall pay Seller the "**Termination Charge**" calculated as of the termination date; provided, however, that:

(a) No Termination Charge shall be payable if the Agreement is terminated by Customer due to the breach or default by Seller.

(b) No Termination Charge shall be payable if the Agreement is terminated by Seller, unless the Seller termination is due to a Customer Event of Default or due to an Exclusion Event described in **Schedule 1.1**, Section 27, subsections (a) through (d).

(c) The Termination Charge payable pursuant to this **Exhibit C** shall be in addition to, not in lieu of, any Termination Charge payable pursuant to **Exhibit D**.

**EXHIBIT D**  
**COMPENSATION – BESS**

1. **TOTAL SYSTEM COST.** For purposes of complying with the requirements of SGIP and determining the amount of any Termination Charge, the “Total System Cost” for the BESS is projected to be: \$1,892,750, which amount is and shall be consistent to submittals to the Program Administrator for SGIP.

2. **BATTERY SERVICE FEES.** For each Billing Period during the BESS Term, in consideration of the delivery of Battery Services, Customer shall pay Developer a “**Battery Service Fee**” equal \$\_\_\_\_ per kWh of Electric Output during such Billing Period. On each anniversary of the Commercial Operation Date during the BESS Term, the Battery Service Fee for the ensuing twelve month period during the BESS Term shall equal \_\_\_\_\_.0% of the Battery Service Fee payable during the prior twelve month period.

3. **INVOICING.** All Battery Service Fee invoices under this Agreement shall be dated as of the last day of production for each Billing Period hereunder; and delivered to the Customer as soon as practicable after the last day of the Billing Period covered by the invoice. All invoices for amounts payable under this Agreement shall be due and payable not later than twenty (20) days after the date of the applicable invoice. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the rate of 12%/annum until paid in full. In the event Customer disputes in good faith any invoiced amounts, Customer shall pay the undisputed portion of such invoice by the due date notwithstanding such Dispute. Following the resolution of any Dispute pursuant to the Agreement, Customer shall make outstanding payments, if any, within fifteen (15) days of such resolution.

4. **TERMINATION CHARGE - BESS.**

a. The “**Termination Charge**” with respect to the BESS is an amount equal to: (a) reasonable compensation, on a net after tax basis for the loss or recapture of all Tax Benefits, including the investment tax credit equal to thirty percent (30%) of the BESS value and MACRS accelerated depreciation equal to eighty five percent (85%) of the BESS value, (Seller shall furnish Customer with a detailed calculation of such recapture and loss amounts if such a claim is made), plus (b) all SGIP Incentives that have not been paid to Seller as of the Agreement termination date; plus (c) all unpaid amounts due and payable under the Agreement and accruing through the termination date; plus (d) the present value, determined as of the termination date using a discount rate of 7% (or, as elected by Seller and if lower, the prevailing market discount rate at the time of calculation), of estimated, remaining Battery Service Fees from the termination date through the last day of the Initial Term or Additional Term in which the termination date occurs.

b. Seller will calculate any Termination Charge and provide the calculation and any back-up to Customer on or before the Agreement termination date. Any Dispute as to the amount of the Termination Charge will be resolved pursuant to the Dispute resolution provisions of the Agreement; provided, however, that, on the termination date or, if later, 15 days after the date Seller delivers the Termination Charge calculation to Customer, Customer will pay Seller all undisputed portions of the Termination Charge and 50% of the disputed portion of the Termination Charge.

5. **PAYMENT OF TERMINATION CHARGE.** Except as provided in subclause (a) or (b) below,

as of the effective date of termination of this Agreement as of a termination date when the BESS is part of the System, Customer shall pay Seller the “**Termination Charge**” calculated as of the termination date; provided, however, that:

- (i) No Termination Charge shall be payable if the Agreement is terminated by Customer due to the breach or default by Seller.
- (ii) No Termination Charge shall be payable if the Agreement is terminated by Seller, unless the Seller termination is due to a Customer Event of Default or due to an Exclusion Event described in **Schedule 1.1, Section 27**, subsections (a) through (d) above.
- (iii) Any Termination Charge pursuant to this **Exhibit D** shall be in addition to and not in lieu of any Termination Charge pursuant to **Exhibit C**.

**6. AVAILABILITY CREDIT.** If, in any Guarantee Year through the fifth Guarantee Year, the BESS is more than 10% Unavailable, as of the first day of the subsequent Guarantee Year, Customer shall be entitled to an “**Availability Credit**,” which may be used to offset amounts owed by Customer under this Agreement from and after the Availability Credit first accrues, which Availability Credit shall equal: (a) the actual Unavailable percentage of the BESS during such Guarantee Year, *minus* 10%, multiplied by (b) the total amount of Battery Service Fees paid by the Customer to Seller for Battery Services provided in such Guarantee Year. By way of example, if, in a Guarantee Year, the BESS was 15% Unavailable and the total Battery Service Fees paid by Customer to Seller for such Guarantee Year was \$60,000, then the Availability Credit for such Guarantee Year would be 5% multiplied by \$60,000 or \$3,000.



## **EXHIBIT F INSURANCE REQUIREMENTS**

1. **SELLER INSURANCE.** At such times during the Term provided below, Seller shall maintain the following insurance coverages, at Seller's cost and expense, and shall, upon Customer's request, furnish to Customer a certificate evidencing such coverage:

a. At all times during the Term, commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage;

b. At all times during the Term, statutory workers' compensation insurance to the full limit of liability required by applicable Law;

c. At all times during the Term, employer's liability insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence;

d. At all times from the commencement of on-site work and the Commercial Operation Date, builder's all risk insurance providing property insurance upon the System on a replacement cost basis, and insuring the interests of Customer, Seller, and its subcontractors in the System installation work;

e. At all times from the COD throughout the Term, property insurance coverage for the System at full replacement value and covering all hazards, including flood and earthquake; and

f. At all times during the Term, commercial automobile liability insurance on all owned, non-owned and/or hired vehicles with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage.

2. **Insurance Requirements of Customer.** At all times during the Term, Customer shall maintain, at its sole cost and expense, (a) property insurance on the Property During the Term, Customer shall maintain property insurance coverage for the Property at full replacement value and covering all hazards, including flood and earthquake; and (b) commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars [(\$5,000,000)] for bodily injury and/or property damage.

3. **Additional Requirements.**

a. All commercial general liability insurance, property insurance, and builder's all-risk insurance maintained by a Party as required by this Agreement shall name the other party as an additional insured.

b. All property and casualty policies required to be maintained by either Party shall be issued by a company with an A.M. Best rating of not less than A:VIII.

c. Each Party shall promptly provide to the other Party written notice of any material changes to, or proposed cancellation of, the insurance policies required to be carried by such Party.

d. As soon as possible after the Effective Date, and thereafter, upon request of the other Party, each Party shall provide the other Party a certificate or other reasonable evidence of the insurance required to be maintained by such Party under this Agreement.

**EXHIBIT G**  
**EXPECTED ANNUAL ENERGY**

*(In accordance with the provisions of § 2.6.5, this Exhibit will be finalized upon Seller's delivery to Customer of a completed version of this Exhibit together with a PVSyst Production Model for the Solar Facility.)*

<b>GUARANTEE YEAR</b>	<b>PERIOD COVERED BY GUARANTEE YEAR</b>	<b>EXPECTED ANNUAL ENERGY (in kWh)**</b>
1 <sup>st</sup> Guarantee Year	6 months after Commercial Operation Date (COD) through day immediately prior to 2 <sup>nd</sup> anniversary of COD	
2 <sup>nd</sup> Guarantee Year	2 <sup>nd</sup> anniversary of COD through day immediately prior to 3 <sup>rd</sup> anniversary of COD	
3 <sup>rd</sup> Guarantee Year	3 <sup>rd</sup> anniversary of COD through day immediately prior to 4 <sup>th</sup> anniversary of COD	
4 <sup>th</sup> Guarantee Year	4 <sup>th</sup> anniversary of COD through day immediately prior to 5 <sup>th</sup> anniversary of COD	
5 <sup>th</sup> Guarantee Year	5 <sup>th</sup> anniversary of COD through day immediately prior to 6 <sup>th</sup> anniversary of COD	
6 <sup>th</sup> Guarantee Year	6 <sup>th</sup> anniversary of COD through day immediately prior to 7 <sup>th</sup> anniversary of COD	
7 <sup>th</sup> Guarantee Year	7 <sup>th</sup> anniversary of COD through day immediately prior to 8 <sup>th</sup> anniversary of COD	
8 <sup>th</sup> Guarantee Year	8 <sup>th</sup> anniversary of COD through day immediately prior to 9 <sup>th</sup> anniversary of COD	
9 <sup>th</sup> Guarantee Year	9 <sup>th</sup> anniversary of COD through day immediately prior to 10 <sup>th</sup> anniversary of COD	
**	80% of the total Electric Output expected to be produced by the Solar Facility based on the attached, weather-adjusted PVSyst model, subject to reduction every 12 months in accordance with manufacturer-projected degradation.	

PVSyst Report for Solar Facility is attached.