

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (“**Agreement**”) is entered into [date] (“**Effective Date**”) by and between [seller] (“**Seller**”) and the County of Monterey, a political subdivision of the State of California (“**Purchaser**”) (each a “**Party**” and collectively the “**Parties**”).

This Agreement is entered into pursuant to a Master Energy Services Agreement dated July 18, 2023 (“**MESA**”) between the Purchaser and Mynt Systems Inc. However, the Parties agree and acknowledge that this Agreement shall be governed by the terms and conditions set forth herein without reference to the MESA.

RECITALS

Purchaser owns or leases various properties, and wishes to reduce its greenhouse gas emissions, energy consumption, and energy costs. Purchaser also desires to improve its energy quality and reliability. To those ends, it has developed a comprehensive energy efficiency and energy cost reduction program.

In furtherance of its energy and environmental goals, Purchaser desires to implement multiple energy service systems on its properties. It is anticipated that the cost of implementing such systems will be less than the anticipated costs of thermal, electrical, and other energy absent such systems. This Agreement memorializes one key facet of that comprehensive program.

California Government Code §§ 4217.10-4217.18 authorizes the Parties to enter into this Agreement and to engage Seller to install and operate the System (as defined below) on Purchaser’s Premises (as defined below).

Seller is willing to finance, construct, operate, and maintain a solar electricity generation system with a battery storage system on Purchaser’s property. In return, Purchaser is willing to enter into this Agreement to purchase power and certain environmental credits from Seller over the Term of this Agreement.

This Agreement sets forth the terms and conditions of the purchase and sale of System Output from the solar electricity generation system (the “**Solar Facility**”) and the storage system (“**BESS**”) (collectively, the “**System**”) described in Exhibit 2.

Therefore, the Parties agree as follows:

1. Definitions.

- a. “Actual Production” shall have the meaning set forth in Exhibit 1.
- b. “Additional Term” shall mean an extension of the Initial Term pursuant to Section 3(b).
- c. “Agreement” shall have the meaning set forth in the Preamble.
- d. “Approval” shall mean the various permits and utility approvals referenced in Section 6(b).
- e. “BESS” shall have the meaning set forth in the Recitals.
- f. “Business Day” shall mean any day that is not a Saturday, a Sunday, a day on which federally-chartered banks in the United States are authorized or required to be closed, or any other day on which the County of Monterey’s administrative offices are closed.
- g. “Change in Law” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

- h.** “Claim” shall have the meaning set forth in Section 17(b).
- i.** “Commencement of Installation” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- j.** “Commercial Operation” means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2, and has permission to operate from the relevant Governmental Authority.
- k.** “Commercial Operation Date” shall have the meaning set forth in Section 6(e).
- l.** “Confidential Information” shall have the meaning set forth in Section 20.
- m.** “Contract Price” shall mean the \$/kWh rate at which Purchaser purchases System Output from Seller. The Contract Rate is set forth in Exhibit 1.
- n.** “Contract Year” shall mean a twelve-month period commencing on the Commercial Operation Date or an anniversary of the Commercial Operation Date. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- o.** “Defaulting Party” shall have the meaning set forth in Section 13.
- p.** “Delivery Point” is the point where System Output is delivered to and where title to the System Output transfers from Seller to Purchaser. The Delivery Point is set forth in Exhibit 2.
- q.** “Effective Date” shall have the meaning set forth in the Preamble.
- r.** “Event of Default” shall have the meaning set forth in Section 13.
- s.** “Excused Event” means (i) destruction or damage to the Solar Facility or its ability to safely produce energy, provided that such damage is not caused by the Seller while servicing the Solar Facility; (ii) Purchaser’s negligence or failure to perform, or breach of, Purchaser’s obligations under this Agreement; (iii) occurrence of a Force Majeure Event; (iv) a power or voltage surge caused by someone other than Seller; (v) any Solar Facility failure not caused by a defect inherent in the design, construction, installation, operation, or maintenance of the Solar Facility by Seller; (vi) curtailment or reduction of energy production required by the Purchaser, Utility, or grid operator; (vii) occurrence of a county action that materially impacts the System’s output; and/or (vii) theft of the Solar Facility or any material component thereof.
- t.** “Fair Market Value” shall have the meaning set forth in Section 16.
- u.** “Financing Party” shall have the meaning set forth in Section 19(b).
- v.** “Force Majeure Event” means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming a Force Majeure Event, including, without limitation, failure or interruption of the production, delivery or acceptance of System Output due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; epidemic; pandemic (inclusive of the ongoing COVID-19 pandemic); terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; failure or unavailability of equipment, supplies or products outside of Seller’s control or due to a Force Majeure Event; and damage, loss or destruction of any part of the Premises or the System due to any of the foregoing.

- w.** “Governmental Authority” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.
- x.** “Guaranteed Production” shall have the meaning set forth in Exhibit 1.
- y.** “Hazardous Substance” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- z.** “Improvement” shall mean any buildings and other improvements on the Premises other than the System.
- aa.** “Incentives” means (i) a payment paid by a utility or state or local or federal Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs. Incentives shall include Self-Generation Incentive Payments.
- bb.** “Indemnified Party” shall have the meaning set forth in Section 17.
- cc.** “Indemnifying Party” shall have the meaning set forth in Section 17.
- dd.** “Initial Term” shall be twenty-five (25) years beginning on the Commercial Operation Date, as set forth in Exhibit 1.
- ee.** “Insolation” shall mean access to sunlight.
- ff.** “Investment Grade” means the assignee has a long-term unsecured debt rating from Moody’s or S&P of at least Baa3 from Moody’s and/or at least BBB- from S&P.
- gg.** “Liabilities” shall have the meaning set forth in Section 17.
- hh.** “Lost Income” shall have the meaning set forth in Section 7.
- ii.** “Meter” shall mean Seller’s revenue grade meter at the Delivery Point.
- jj.** “MESA” shall have the meaning set forth in the Preamble.
- kk.** “Non-Defaulting Party” shall have the meaning set forth in Section 13.
- ll.** “Outage” shall have the meaning set forth in Section 7(d).
- mm.** “Outage Allowance” shall have the meaning set forth in Section 7(d).
- nn.** “Party” or “Parties” shall have the meaning set forth in the Preamble.

- oo. “Payment Default” shall have the meaning set forth in Section 13(a).
- pp. “Premises” shall mean the Purchaser’s property where the System will be located. The Premises are depicted in Exhibit 2, Schedule A.
- qq. “Purchase Commitment” shall have the meaning set forth in Section 2(a).
- rr. “Purchaser” shall have the meaning set forth in the Preamble.
- ss. “Purchaser Forms” means the forms Purchaser may require and which include some or all of the forms commonly referred to as “Contractor’s Certificate as to Workers’ Compensation”, “Iran Contracting Act Certification”, “Contractor’s Certification of Good Faith Effort to Employ Monterey Bay Area Residents”, and “Guaranty” (with respect to certain warranties), in form and substance satisfactory to the Purchaser.
- tt. “REC” means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.
- uu. “Refund Payment” shall have the meaning set forth in Exhibit 1.
- vv. “Self-Generation Incentive Payments” shall mean payments from the California Public Utilities Commission’s (CPUC) to support distributed energy storage for qualified energy storage projects.
- ww. “Seller” shall have the meaning set forth in the Preamble.
- xx. “Site Lease” shall have the meaning set forth in Section 8.
- yy. “Solar Facility” shall have the meaning set forth in the Preamble.
- zz. “Step-In Rights” shall have the meaning set forth in Section 13(b).
- aaa. “System” shall have the meaning set forth in the Recitals.
- bbb. “System Output” shall mean the electric energy generated by the System.
- ccc. “System Performance Guarantee” shall have the meaning set forth in Exhibit 1.
- ddd. “Term” shall have the meaning set forth in Section 3(a).
- eee. “Termination Payment” shall mean a payment made by Purchaser to Seller, pursuant to the schedule set forth in Exhibit 1, to terminate this Agreement.
- fff. “Utility” shall be the utility that the System is interconnected to, PG&E.

2. Purchase and Sale of System Output.

- a. **Output and Delivery Point.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the System Output during the Term (the “**Purchase Commitment**”). System Output shall be delivered to Purchaser at the Delivery Point. Title to, and risk of loss for, the System Output passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser’s electricity consumption requirements at the Premises exceed the output of the System.

- b. **Net Metering.** Purchaser, with the support and assistance of Seller, will make arrangements with Utility so that System Output in excess of Purchaser's requirements may be delivered to the Utility through the Delivery Point, and Purchaser shall receive any and all credits or payments from the Utility that may be available under net metering or similar programs.
- c. **Use of Energy Storage System.** Without limiting Purchaser's obligations under this Agreement, when electric energy from the Solar Facility exceeds Purchaser's load and cannot be sold to the Utility pursuant to a net metering arrangement (or because it is more economically advantageous, in the Seller's discretion, to store the electric energy), Seller shall store such excess generation in the BESS for later delivery to Purchaser to the extent that such excess generation can be stored in the BESS given its available capacity and operating characteristics. Purchaser shall cooperate with Seller and provide Seller with information concerning Purchaser's load and usage so as to enable Seller to operate the System efficiently and schedule delivery of electric energy to and from the BESS. Seller shall in its sole discretion determine the times at which it will charge and dispatch the BESS to best serve Purchaser's load requirements and maximize savings to Purchaser. Purchaser shall purchase all energy dispatched from the BESS to the Delivery Point at the Contract Price.
- d. **Performance Guarantee.** Seller shall deliver each Contract Year an amount of electric energy as set forth in the performance guarantee contained in Exhibit 1.
- e. **Access to Data.** Seller shall provide Purchaser with access to data of the System in order to permit Purchaser to monitor System performance and System Output.

3. **Term and Termination.**

- a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The System Output supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the "Term").
- b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for one or more Additional Term(s), as set forth in Exhibit 1, at a Contract Price to be agreed.
- c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Exhibit 1, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have attempted to negotiate a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Exhibit 1 or otherwise.
- d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred 365 days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 3(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, if Commercial Operations has not occurred within three (3) years after the Effective Date, then Purchaser may terminate this Agreement immediately by providing written notice to Seller. Neither Purchaser nor Seller shall be liable for any damages in connection with any such termination under this section.

4. **Billing and Payment; Taxes.**

- a. **Monthly Charges.** Purchaser shall pay Seller monthly for the following services:
 - i. **Output.** Purchaser shall purchase the System Output generated by the System and delivered to the Delivery Point at the Contract Price. The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of System Output delivered to the Delivery Point during the applicable

month, as measured by the Meter.

- b. **Monthly Statements.** Seller shall bill Purchaser monthly. Such monthly statements shall detail (i) the amount of System Output produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
- c. **Payment Terms.** Purchaser shall be solely responsible for certifying each monthly statement to the Purchaser's auditor-controller within ten (10) days of receipt thereof. The Purchaser auditor-controller shall pay the amount certified within thirty (30) days of receiving the certified monthly statement. All payments shall be made in U.S. dollars.
- d. **Taxes.**
 - i. **Purchaser's Taxes.** Purchaser is responsible for (if applicable): (1) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of System Output produced by the System, any personal property taxes imposed on the System, or the interconnection of the System to the utility's electricity distribution system; and (2) property taxes.
 - ii. **Seller's Taxes.** Seller is responsible for payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of System Output under this Agreement.
- e. **Disputed Statements.** If Purchaser objects to all or a portion of a monthly statement, Purchaser shall notify Seller in writing within ten (10) Business Days of receipt of any monthly statement of any portion of the invoiced amount that it has a reasonable basis to dispute. Purchaser shall (i) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections, and (ii) on or before the date payment of the payment is due, pay the undisputed portion of the monthly statement. The contested portion of any invoiced amount shall not relieve Purchaser of its obligation to pay the uncontested portion of such monthly statement when due. If Purchaser does not object within ten (10) Business Days of receipt of any monthly statement, Purchaser shall be obligated to pay the full amount of such monthly statement; provided, however, that Purchaser may subsequently object to such monthly statement and, if such objection proves to be correct, Purchaser shall be entitled to a full refund of the disputed amount.

5. **RECs and Incentives.**

- a. **RECs.** Purchaser is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall cooperate with Purchaser in obtaining, securing and transferring any and all RECs. Seller is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Purchaser. Seller shall not make any filing or statements inconsistent with Purchaser's ownership interests in the RECs. If any RECs are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.
- b. **Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives. Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all Incentives. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the Incentives. If any Incentives are paid or delivered directly to Purchaser, Purchaser shall immediately pay or deliver such items or amounts to Seller.

6. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 3(c), Section 13, and the remaining provisions of this Section 6.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "Approval"):
 - i. any zoning, land use, and building permits required for Seller to construct, install, and operate the System; and

- ii. any agreements and approvals from the utility necessary to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within 365 days after the Effective Date.
- d. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date set forth in such notice, the "**Commercial Operation Date**"). Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser's reasonable request.
- f. **Compliance with all Laws and Regulations.** Seller (and/or any contractors or subcontractors working on the System) shall comply with all applicable laws, regulations, and codes during the construction and operation of the System. This includes, if applicable, any and all laws, regulations, and codes associated with public works projects, including Purchaser's Local Employment provision set forth in County Code Title 5.08.120.
- g. **Non-Disruption of Purchaser's Operation.** Seller (and/or any contractors or subcontractors working on the System) shall construct the System in a manner that does not materially interfere with or disrupt the Purchaser's operations (including, but not limited to, parking, utilities, noise, access by employees and administration, access by vendors, and any other person using Purchaser's facilities). Seller shall coordinate with Purchaser to facilitate construction of the System in a timely, cooperative, and mutually agreeable manner. Seller (and/or any contractors or subcontractors working on the System) shall keep the Premises free from accumulation of waste materials or rubbish caused by its operations. After construction, Seller (and/or any contractors or subcontractors working on the System) shall remove all of its waste materials and rubbish from the Premises.

7. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the state in which the Premises are located. The System shall comply with all applicable rules, regulations, and local building codes. Seller shall install and maintain the System so as to not impair or violate the Purchaser's warranty on the roof.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Purchaser to respond within such thirty (30) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 3(c) above.
- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any disruption to Purchaser's operations. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees, or contractors.

- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of ninety-six (96) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the ninety-six (96) hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 7(c) or requested by Purchaser under this Section 7(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance or immediately in case of urgent repairs. Purchaser is not obligated to accept or pay for System Output from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of System Output that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement that may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations, or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 9 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 7(b) and 7(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits. In the case of any such relocation, Purchaser shall reimburse Seller for all costs of such relocation, including the loss of revenues, and any loss of Incentives ("**Lost Income**").

8. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Site Lease Access Rights.** Purchaser and Seller are entering into a separate site lease agreement providing for access to, on, over, under and across the Premises during the Term (the "**Site Lease**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement. During the Term, Purchaser shall preserve and protect Seller's rights under the Site Lease and shall not interfere with, or permit any third parties under Purchaser's control to interfere with, such rights or access. Seller may record a customary memorandum of license in the land records respecting the Site Lease.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment, or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees, or separate contractors.

- d. **Insolation.** Purchaser acknowledges that unobstructed Insolation is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors, and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
 - i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume, or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature (each a "Lien") on or with respect to the System, except such encumbrances as may be required to allow Seller access to the Premises. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
 - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 8(f)(i).
- a. **Purchaser Forms.** Seller shall deliver to the Purchaser completed Purchaser Forms on the Effective Date, as required by Purchaser.

9. Relocation of Purchaser Operations.

If, during the Term, Purchaser ceases to conduct business operations at the Premises, vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to accept the System Output for any other reason (other than an Event of Default by Seller), Purchaser shall provide Seller with as much advance notice as is practicable under the circumstances. Purchaser shall assist Seller in facilitating the assumption of this Agreement by the new occupant of the Premises as permitted under Section 19 or a new power purchase agreement between Seller and a new purchaser of the System Output. In the event no assignment or new agreement is accomplished for the same Purchase Commitment within 365 days of Purchaser's notice to Seller, Purchaser may elect to terminate this Agreement and pay the Termination Payment. This situation shall not be considered an Event of Default and Purchaser's liability to Seller for such early termination shall be limited to the payment of the Termination Payment.

10. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 16(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to

substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 14(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space, and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

11. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by the Meter at the Delivery Point. Purchaser shall have access to the metered energy output data via online access to the monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall calibrate the Meter regularly in accordance with manufacturer's recommendations. If the meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior monthly statement shall be adjusted accordingly, and any amounts owed to Purchaser shall be credited against future monthly statement for System Output. If the meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior monthly statement shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during the twelve-month period preceding the test and any amounts owed to Purchaser shall be credited against future monthly statement for System Output.

12. Force Majeure.

- a. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. Subject to Section 12(b), if the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver System Output to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
- b. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, (b) upon Purchaser or Seller termination of the Agreement, Seller shall remove the System as required under Section 10 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement), and (c) if Purchaser elects to terminate the Agreement in accordance with this section, Purchaser shall pay the applicable Termination Payment (less any costs that were recovered through an insurance claim). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

13. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**," the other Party is the "**Non-Defaulting Party**," and each of the following is an "**Event of Default**":
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is

subject to a good faith dispute, within thirty (30) days of the date such payment is due (“**Payment Default**”);

- ii. failure of a Party to secure the release of any Lien not expressly permitted under this Agreement within thirty (30) days following notice of such non-permitted Lien by the other Party;
- iii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 13(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Event of Default cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser loses its rights to occupy and enjoy the Premises, unless (1) the Parties agree upon a relocation under Section 9 above, or (2) Purchaser pays the Termination Payment set forth in Exhibit 1 within thirty (30) days after written request by Seller;
- vii. in the case of Purchaser as the Defaulting Party only, Purchaser prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (1) is permitted under this Agreement, or (2) is cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Suspension and Step-in Rights.** Upon the occurrence and during the continuation of an Event of Default by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Event of Default in full, or (b) of termination of this Agreement. Seller’s rights under this Section 13(b)(i) are in addition to any other remedies available to it under this Agreement, at law, or in equity. In the event of an Event of Default by Seller, Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser’s notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition (“**Step-in Rights**”); provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser’s and Seller’s obligations under this Agreement shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.
- ii. **Termination.** Upon the occurrence and during the continuation of an Event of Default, and subject to the Step-in Rights of subsection (i) above, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of an Event of Default under Section 13(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 13(b)(ii), the Defaulting Party shall pay a default termination payment to the Non-Defaulting Party

determined as follows:

- (1) **Termination by Seller.** If Seller terminates this Agreement for an Event of Default by Purchaser, the default termination payment payable to Seller shall be equal to the sum of (i) the applicable amount according to the Termination Payment schedule set forth in Exhibit 1, and (ii) any other amounts previously accrued under this Agreement and owed by Purchaser to Seller.
 - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the defaulting termination payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable (i.e., the present value of the money that Purchaser would have saved had the Agreement remained in effect); (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The payment determined under this Section 13(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 13(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 13(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- v. **Limitation of Liability.** Except with regard to third-party claims for which Seller is responsible under Section 17, Seller's maximum liability under this Agreement to Purchaser, whether in contract, warranty, indemnity, tort, negligence, strict liability, or otherwise, shall in no event exceed the aggregate amount of the remaining payments reasonably expected to be made by Purchaser pursuant to this Agreement calculated as of the date of the last event or occurrence giving rise to Seller's alleged liability.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 13(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 10 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of an Event of Default by Purchaser pursuant to Section 13(a)(vi), unless Purchaser pre-pays the cost of relocation reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 13(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 13(b)(iii), nothing in this Section 13 limits either Party's right to pursue any remedy under this Agreement, at law, or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Event of Default under this Agreement.
 - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for an Event of Default, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Event of Default; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Exhibit 1 following an Event of Default by Purchaser.
 - iii. **No Limitation on Payments.** Nothing in this Section 13 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for System Output that would have been delivered to Purchaser but for a Purchaser breach or Event of Default.

14. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do

not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

- ii. Such Party has obtained all licenses, authorizations, consents, and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business, and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

- i. **Site Rights.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power, and authority to grant the rights conferred in the Site Lease; (b) such grant does not violate any law, ordinance, rule, or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the rights under the Site Lease to Seller so that Seller may perform its obligations under this Agreement.
- ii. **No Litigation.** No suit, action, or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser.
- iii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iv. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.
- v. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- vi. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

c. Seller's Warranties.

- i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
- ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 14(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.

d. NO OTHER WARRANTY. THE WARRANTIES SET FORTH IN SECTIONS 14(a) AND 14(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 14, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. OTHER THAN AS

EXPRESSLY SET FORTH IN SECTIONS 14(a) AND 14(c), NO WARRANTY, 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, APPLIES UNDER THIS AGREEMENT.

15. Insurance.

a. Insurance Coverage. At all times during the Term, the Parties shall maintain the following insurance, as applicable:

i. Seller's Insurance. Seller shall maintain or ensure the following is maintained:

- (1) Commercial general liability insurance, including, but not limited to, premises and operations, including coverage for bodily injury and property damage, personal/advertising injury, contractual liability, broadform property damage, independent contractors, products and completed operations, and with a ten (10) year products and completed operations extension, with limits as follows: general aggregate (reinstates annually) of \$4,000,000; products/completed operations aggregate of \$4,000,000; personal/ advertising injury of \$2,000,000; each occurrence limit of \$4,000,000 during construction of the System and \$1,000,000 after Commercial Operation; and \$1,000,000 damage to premises.
- (2) Builders risk/course of construction insurance covering the full insurable value of the facility. This insurance shall include the interests of the Purchaser and shall insure against the perils of fire, extended coverage, builder's risk, vandalism, and malicious mischief.
- (3) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence.
- (4) Workers' compensation insurance in accordance with California Labor Code Section 3700 and with employer's liability limits not less than \$1,000,000 each person, \$1,000,000 each accident, and \$1,000,000 each disease.
- (5) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$2,000,000 per claim and \$4,000,000 in the aggregate during construction of the System and \$1,000,000 per claim and \$2,000,000 in the aggregate after Commercial Operation, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, Seller shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.
- (6) Excess liability insurance (over commercial general liability) of not less than combined single limit \$5,000,000, general aggregate of \$5,000,000, and products and completed operations aggregate of \$5,000,000, and with a ten (10) year products and completed operations extension.

ii. Subcontractor's Insurance. Without limiting Seller's obligations hereunder, Seller shall also require all subcontractors to maintain in effect throughout the term of this Agreement all the insurance requirements in Section 15(a)(i). above, except that the minimum limits of general liability insurance shall be at least a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence, general aggregate limits of not less than \$2,000,000, limits for products and completed operations of not less

than \$2,000,000 aggregate and \$1,000,000 per occurrence, and limits for personal/advertising injury of not less than \$1,000,000 per occurrence and aggregate.

iii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$4,000,000 per occurrence and \$4,000,000 annual aggregate. Purchaser may maintain self-insurance coverage for any and all of the insurance requirements provided herein. The specified insurance liability limits may be met through any combination of self-insurance, primary, and excess coverage.

b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is reduced, cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party. Unless otherwise specified, all insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following termination of this Agreement. Commercial general liability and business automobile liability insurance shall name Purchaser as additional insureds and shall provide that such insurance is primary insurance to any insurance or self-insurance maintained by Purchaser.

c. **Certificates.** Prior to the Commencement of Installation (and thereafter upon renewal or replacement of each required policy of insurance), Seller shall provide a "Certificate of Insurance" to Purchaser certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by Seller upon request. A Party's receipt, review, or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

d. **Acknowledgement of Workers' Compensation Requirements.** Seller and its subcontractors shall file with Purchaser the following certificate: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and I will comply with such provisions before commencing the performance of the work of this contract."

e. **Compliance.** In the event of the failure of Seller to furnish and maintain any insurance required by this Section, Purchaser shall have the right to take out and maintain such insurance for and in the name of Seller. Seller shall pay the cost thereof and shall furnish all information necessary to obtain and maintain such insurance for the account of Purchaser. Purchaser shall each have the right to offset the costs of obtaining and maintaining such insurance against any amounts due under this Agreement.

f. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

g. **Subcontractors.** Each policy shall provide coverage for Purchaser and additional insureds with respect to claims arising from each subcontractor, if any, performing this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing that the subcontractor has identical insurance coverage to the above requirements.

16. **Ownership; Option to Purchase.**

a. **Ownership of System.**

i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System and all Incentives, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed.

Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

b. Option to Purchase.

- i. Exercise of Option. Beginning at the end of the sixth (6th) Contract Year, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on the first day of the seventh (7th) Contract Year, the first day of the ninth (9th) Contract Year, the first day of the eleventh (11th) Contract Year, the first day of the sixteenth (16th) Contract Year, or the first day of the twentieth (20th) Contract Year, in each case for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment set forth in Exhibit 1 applicable as of the date of the transfer of title to the System. Purchaser shall notify 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 applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. Fair Market Value. The “**Fair Market Value**” of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, 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 on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will 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.
- iii. Title Transfer; Warranties; Manuals. Seller shall transfer good title to the System to Purchaser upon Seller’s receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold “as is, where is, with all faults.” Seller will assign to Purchaser any manufacturer’s warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller’s possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser’s reasonable request. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 21(d), Seller will have no further liabilities or obligations hereunder for the System.

17. Indemnification and Limitations of Liability.

- a. General. Each Party (the “**Indemnifying Party**”) shall defend, indemnify, and hold harmless the other Party, its affiliates and the other Party’s and its affiliates’ respective directors, officers, shareholders, partners, members, agents, and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (1) any Claim (as defined in Section 17(b)) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 14 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 17(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 17(c). In addition, Seller shall defend, indemnify, and hold harmless Provider’s Indemnified Parties from and against any Liabilities resulting from any Claim by a third party which was in negotiations with Seller prior to

June 13, 2023 to become a Financing Party with respect to the System but did not become such a Financing Party.

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 17(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
- i. **Seller Indemnity.** Seller shall indemnify, defend, and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below, or near the Premises of any Hazardous Substance to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents,, or employees.
 - ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend, and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below, or near the Premises of any Hazardous Substance, except to the extent deposited, spilled, or otherwise caused by Seller or any of its contractors, agents, or employees.
 - iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill, or release of any Hazardous Substance.
- d. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 17, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 17(d).
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES, IN COMBINATION WITH ANY REMEDIES PROVIDED UNDER THE SITE LEASE, ARE THE AFFECTED PARTY’S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

18. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller’s rights, entitlement, obligations, or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 10 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination; provided, however, that if such Change in Law is the result of any application or action of Purchaser, then Purchaser shall be liable to pay Seller the applicable amount listed in the Termination Payment Schedule.

19. **Assignment and Financing.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 19(a), 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 may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 19(a)(i):
1. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge, or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 19(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
 2. Purchaser may, by providing prior notice to Seller, assign this Agreement:
 - a. to a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness; and
 - b. to an assignee that has an Investment Grade credit rating at the time of the assignment.
 - iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors, or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment, and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment, or amendments do not alter the fundamental economic terms of this Agreement.

- c. **Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

20. **Confidentiality.**

- a. **Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides

confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement.

b. Permitted Disclosures. Notwithstanding Section 20(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants, and Financing Parties (collectively, “Representatives”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law.

c. Miscellaneous. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 20 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 20. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

d. Goodwill and Publicity. Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

21. General Provisions

a. Definitions and Interpretation. Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

- b. **Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to the conflicts of law principles thereof.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation, provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 10 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of System Output from the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided

herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.

- m.** **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

[Signature page follows]

COUNTY OF MONTEREY

By: _____
Name: _____
Title: _____
Date: _____

**APPROVED AS TO FORM
CONTRACTS/PURCHASING**

Name: _____
By: _____
Title: Contracts/Purchasing Officer
Date: _____

**APPROVED AS TO FORM & LEGALITY
OFFICE OF THE COUNTY COUNSEL-
RISK MANAGEMENT, LESLIE GIRARD**

By: _____
Name: _____
Title: Deputy County Counsel
Date: _____

**APPROVED AS TO FISCAL TERMS
COUNTY AUDITOR-CONTROLLER**

By: _____
Name: _____
Title: Chief Deputy Auditor-Controller
Date: _____

**APPROVED AS TO
INDEMNITY/INSURANCE LANGUAGE
COUNTY COUNSEL-RISK MANAGEMENT**

By: _____
Name: _____
Title: _____
Date: _____

[SELLER]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit 1

Basic Terms and Conditions

1. **Initial Term:** 25 years, beginning on the Commercial Operation Date (the “**Initial Term**”).
2. **Additional Terms:** Up to two (2) terms of five (5) years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
3. **Incentives, including Self-Generation Incentive Program, and Environmental Attributes:** Accrue to Seller.
4. **Renewable Energy Certificates (RECs):** Accrue to Purchaser.
5. **Net Metering Benefits:** Accrue to Purchaser.
6. **Energy Arbitrage and/or Demand Savings:** Accrue to Purchaser.
7. **Contract Price:**

Contract Year	Output (\$/kWh)
1	\$0.230
2	\$0.238
3	\$0.246
4	\$0.255
5	\$0.264
6	\$0.273
7	\$0.283
8	\$0.293
9	\$0.303
10	\$0.313
11	\$0.313
12	\$0.313
13	\$0.313
14	\$0.313
15	\$0.313
16	\$0.313
17	\$0.313
18	\$0.313
19	\$0.313
20	\$0.313
21	\$0.313
22	\$0.313
23	\$0.313
24	\$0.313
25	\$0.313

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

8. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:
 - a. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.
 - b. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including: painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - c. Roof membrane maintenance or reroofing work.

- d. Installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support and ADA access).

9. Termination Payment Schedule [Subject to change based on final system size]

Contract Year	Termination Payment (\$)
1	\$8,723,241.89
2	\$8,195,611.39
3	\$7,267,255.51
4	\$6,358,774.28
5	\$5,460,566.54
6	\$4,586,218.88
7	\$3,795,600.42
8	\$3,830,159.04
9	\$3,863,063.97
10	\$3,894,776.40
11	\$3,934,415.81
12	\$3,991,295.94
13	\$4,066,386.03
14	\$4,160,727.38
15	\$4,275,438.54
16	\$4,202,346.47
17	\$3,740,817.62
18	\$3,285,393.06
19	\$2,835,112.49
20	\$2,389,962.74
21	\$1,949,931.28
22	\$1,515,006.21
23	\$1,085,176.27
24	\$660,430.86
25	\$240,760.00

10. Performance Guarantee:

The Solar Facility is expected to produce (prior to accounting for any weather conditions) the amount of electricity set forth in the table below during each Contract Year, commencing on the Commercial Operation Date. Subject to the terms, conditions, and limitations herein, Seller guarantees that the Solar Facility will produce at least 90% of the weather-adjusted expected energy output in the first Contract Year (assuming no Excused Event or Outage, as set forth below), with an assumed degradation rate of 0.7% each subsequent Contract Year, as detailed in the table below (such weather-adjusted figure, the “**Guaranteed Production**” and such guarantee, the “**System Performance Guarantee**”).

If at the end of each Contract Year the electricity produced by the Solar Facility (the “**Actual Production**”) is less than the Guaranteed Production for that Contract Year, then Seller shall compensate Purchaser as set forth in this section. In such cases, Seller shall pay Purchaser an amount equal to (i) the difference between the Guaranteed Production and the Actual Production (i.e., the shortfall, measured in kWh), multiplied by (ii) the difference between the Purchaser’s average electric rate from Utility (in \$/kWh) during the applicable year and the Contract Price during the applicable year (such amount, the “**Refund Payment**”). The Refund Payment shall be due and payable within ninety (90) days after the end of the Contract Year.

If the Actual Production exceeds the Guaranteed Production in any given Contract Year, the excess production shall be credited towards the production in any of the next four subsequent Contract Years, if needed, so that if there is a shortfall in such Contract Years, the credit will be applied first towards the shortfall, before any Refund Payment must be paid by Seller. Any excess Actual Production not used in the next four years will be forfeited for purposes of applying it to future shortfalls.

Table 1: Pre-Weather Adjusted Guaranteed Production

Contract Year	Projected units generated (kWh)	Pre-Weather Adjusted Guaranteed Production (kWh)*
1	1,776,073	1,598,466

2	1,767,193	1,590,473
3	1,758,357	1,582,521
4	1,749,565	1,574,608
5	1,740,817	1,566,735
6	1,732,113	1,558,902
7	1,723,452	1,551,107
8	1,714,835	1,543,352
9	1,706,261	1,535,635
10	1,697,730	1,527,957
11	1,689,241	1,520,317
12	1,680,795	1,512,715
13	1,672,391	1,505,152
14	1,664,029	1,497,626
15	1,655,709	1,490,138
16	1,647,430	1,482,687
17	1,639,193	1,475,274
18	1,630,997	1,467,897
19	1,622,842	1,460,558
20	1,614,728	1,453,255
21	1,606,654	1,445,989
22	1,598,621	1,438,759
23	1,590,628	1,431,565
24	1,582,675	1,424,407
25	1,574,761	1,417,285

* The Pre-Weather Adjusted Guaranteed Production is before accounting for weather conditions and other factors set forth herein.

The following assumptions, qualifications, and exclusions shall apply to the foregoing System Performance Guarantee:

(a) The energy generation guarantee pertains only to the output of the Solar Facility. Seller makes no representations regarding impact to Purchaser's electric bill, which can vary due to a variety of factors outside Seller's control such as changes in Utility rates.

(b) The allocated solar zone must remain free from any obstruction (e.g., new adjacent construction or trees/vegetation that cause a reduction in solar energy reaching the Solar Facility).

(c) The System Performance Guarantee does not apply to the extent of any reduced generation from the Solar Facility due to an Excused Event or Outage.

(d) If the Purchaser's average kWh rate from Utility during the applicable year is not available to the Seller (and is not provided by Purchaser within ten (10) days of a request by the Seller) to calculate a Refund Payment, Seller shall not be obligated to make such Refund Payment.

Should any of the preceding requirements not be met, the System Performance Guarantee shall be null and void (or, in the event of an Excused Event or Outage as set forth in (c), the Guaranteed Production shall be reduced to reflect the impact of the Excused Event or Outage), and Seller shall have no liability or responsibility for any performance guarantee. The Parties agree that each applicable Refund Payment is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the Solar Facility, is bargained-for by the Parties, and shall be the Purchaser's sole and exclusive remedy hereunder for underperformance of the Solar Facility.

Exhibit 2

System Description, Delivery Point and Premises

1. **System Location:** 1410 Natividad Road, Salinas, CA 93906
2. **System Size (DC kW):** 1202 kW-DC
3. **System Description (Ground mount, rooftop, carport, etc.):** Carport

PV System:

Modules: ZNShine Solar 540W Solar Panel 144 Cell Bifacial ZXM7-SHLDD144-540/M or Tier 1 equivalent
Inverters: SolarEdge SE66.6K-US / SolarEdge SE100K-US or equivalent

Battery Energy Storage System:

Batteries: Tesla Megapack 2 or equivalent
Inverters: Tesla Megapack 2 or equivalent

4. **Host Utility:** PG&E (“Utility”)
5. **Expected Energy Storage Capacity (kWh):** 1,043kW / 2,087kWh

* These are estimates (and not a guarantee) of the system size

6. **Delivery Point and Premises:** Schedule A to this Exhibit 2 contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location;
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to install and service the System (building. access, electrical room, stairs etc.); and
 - e. Construction assumptions (if any).

Exhibit 2, Schedule A
Premises

1410 Natividad Road, Salinas, CA 93906

Site and Facility Descriptions

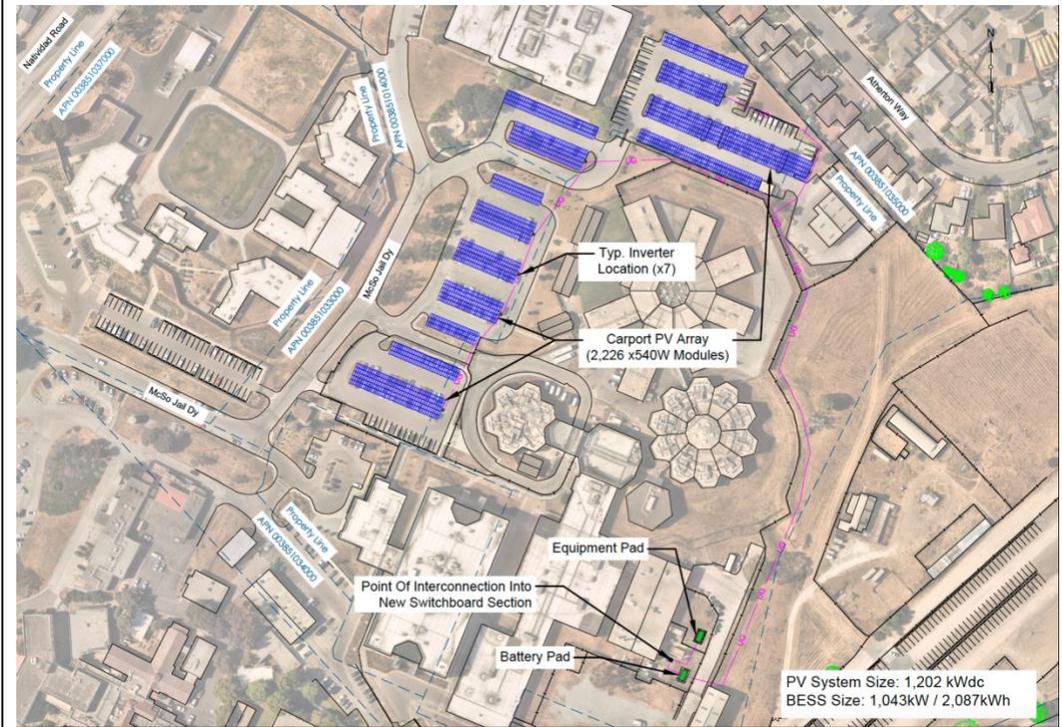


Exhibit 3
Copy of Roof Warranty